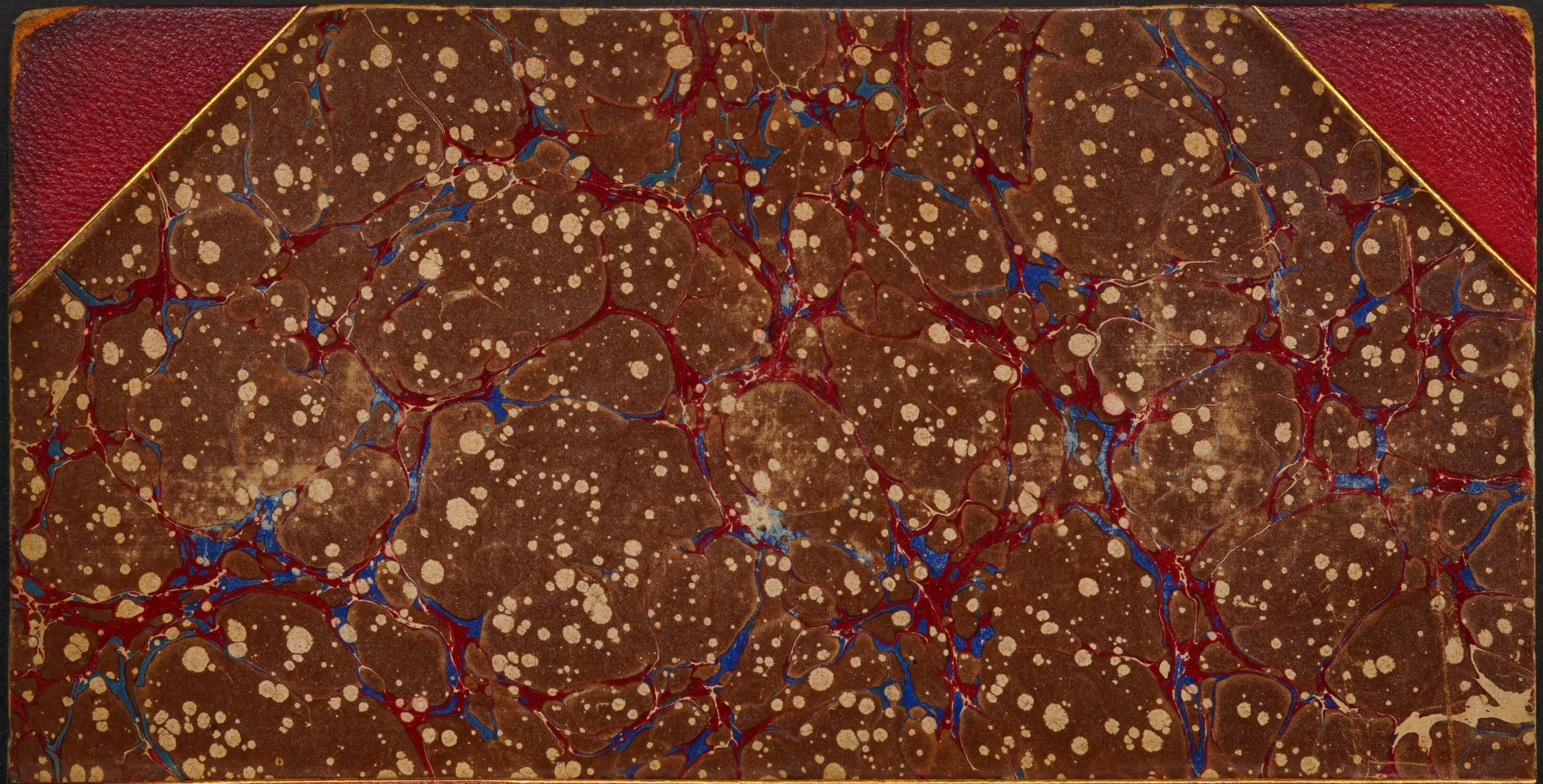
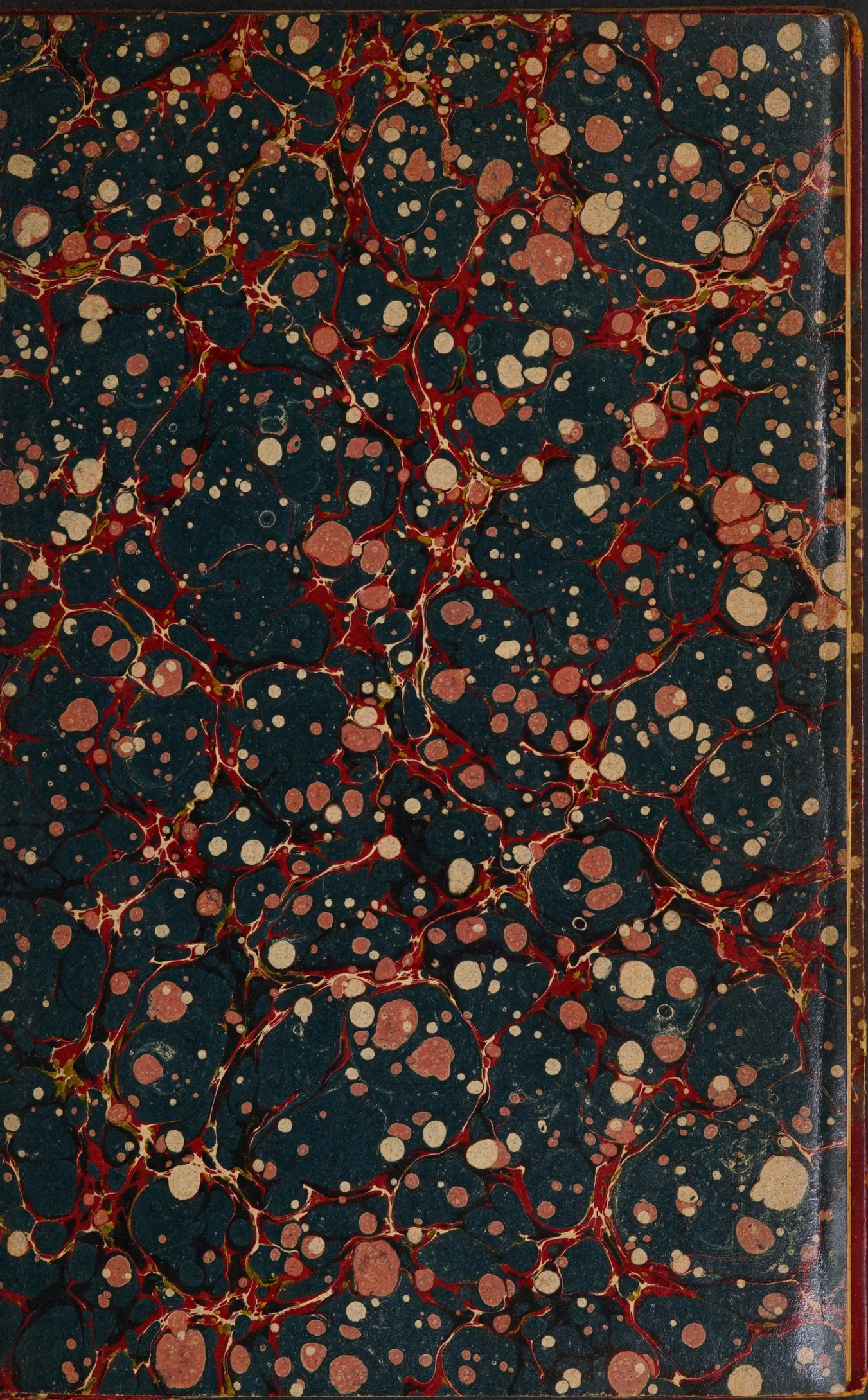


VINDICATION
BY
CADWALLADER
D. COLDEN

1818



A

VINDICATION

BY

CADWALLADER D. COLDEN,

OF THE

STEAM BOAT RIGHT

GRANTED BY THE

STATE OF NEW-YORK;

IN THE

FORM OF AN ANSWER

TO THE

LETTER OF MR. DUER,

ADDRESSED TO

MR. COLDEN.

ALBANY:

PRINTED BY WEBSTERS AND SKINNERS.

****

1818.

☞ The circumstances under which these pages have been written and printed, have caused many errors, perhaps chiefly to be attributed to the author. The reader is requested to correct the following which have been discovered since the print ing :

Page 11 line 2. For this read *the.*
4. Insert *of* after *disapproving.*
12 25. Dele. *and.*
15 22. For *representations* read *representatives*
23 last line but one. For *Livingston and Fulton* read *Livingston and Fulton's title.*
34 line 18. For *it* read *he.*
42 15. Dele. *for.*
48 2. For *meaning* read *sense,* and dele. *the meaning of*
21. For *design* read *designed.*
49 14. For *expressions* read *expression.*
19. For *fradulent* read *fraudulent.*
61 25. For *Livingston* read *Livingston's.*
62 9. Dele *the committee.*
63 19. For *Livingston* read *Livingston's.*
86 last line. For *his* read *Fitch's.*
90 24 and 28. For *was* read *were.*
91 16. Dele. *but.*
104 16. For *lion* read *lions.*
106 5 and 11. For *was* read *were.*
119 3. For *become* read *became.*
last line but one, for *to,* at the end of the line, read *from.*
120 25. After *venture* read *to assert.*
121 18. After *existence* insert *;*
122 5. For *on* read *of.*
123 7. Instead of *;* insert , *and.*
124 17. Instead of *to* after *right* insert *from.*
18. For *ran* read *run.*
137 4 and 5. For *irrefragible* read *irrefragable*
138 4. For *emptories,* read *emptores.*
21. After constitution read *from.*
140 last line, for *were* read *are.*
144 line 7, after *nor* read *by.*

The author thinks it necessary to mention, that the sheets subsequent to page 144, and the appendix, will, on account of the necessity for his leaving the city of Albany, be printed without his having an opportunity to see the *revise.*

Albany, 23d February, 181 8.

A

VINDICATION,

&c.

SIR,

It is extremely to be regretted that a single professional engagement should have prevented your perusing the Biography of Fulton at an earlier period. An apology for so long a postponement of the publication you have thought proper to make was certainly not unwise: because, without some reason assigned for the delay, its appearing so immediately before the session of the legislature, would have excited an universal suspicion, which some will even yet indulge, that it is intended, not so much for a vindication of the measures in which you had a peculiar share, as

to subserve the views of those who have an interest in destroying the exclusive right granted by this state to Messrs. Livingston and Fulton It is well known, that persons of that description, are preparing to reiterate at the present session of the legislature, the attempts which have been so often made to obtain a repeal of the laws by which this exclusive right is protected.

For my own part, although the ostensible object of your letter to me, be, to vindicate the committee, I cannot consider it otherwise than as the production of a zealous champion for those who are meditating renewed attacks against the steam boat rights. I do feel that your publication justifies me in imputing to you this character. For if your object were merely to vindicate yourself or the committee as to what had taken place in 1814, why should you have obtruded in your appendix the petitions of Mr. Hawkins and Mr. Sullivan, which were not preferred till 1817, and the proceedings of the legislature on these petitions?—why should you speak of them as presenting, "peculiarly formidable grounds," when you so well know that at least one of these applications is to be renewed at the present session of the legislature of which you are a member? Can even charity suppose, that you had not a design by the publication you have made, to serve the interest of those who are so pertinaciously manifesting their hosti-

lity to the claimants under the exclusive right granted by the state.

I have seen letters, which I dare say I might with propriety call circulars, from the patentee of the tow-boat, in which he assures his correspondent he has no doubt that the application which he intends to *renew* with *additional force* at the ensuing session of the legislature, will terminate in his favor. Whether your publication is part of the *new force* on which the tow-boat patentee calculated, I cannot say There are, however, circumstances which afford some reason to believe that it may be so. I am credibly informed that your book was carefully and without delay transmitted to almost all, if not to all the members of the legislature. Moreover, within a very few days after it appeared in New-York, there was published a pamphlet, professing to be a review of it. I think that even you, notwithstanding the commendations which the author of this review lavishes on the *purity* of your style and the force of your reasoning; notwithstanding his flattering recognition of you as a man of high honor and firm principle—yet I think that you will not be proud of this association in the cause you have espoused: for his pamphlet is a most shameful attempt to revive the grossest calumnies that interest, envy, and jealousy ever propagated against Mr. Fulton: From the time and manner of the publication also

it is most obviously the result of a combination to favor the intended application of Mr. Sullivan; the merits of whose claim your panegyrist introduces with all the advantages it can derive from your opinion, that it rests "upon new and peculiarly formidable grounds." You may believe me, that the baseness of your coadjutor's publication excites the disgust of every man of honor and feeling.

As your professional engagement occupied you but a few weeks after the publication of the biography of Mr. Fulton, it cannot but excite some surprise that so many months should have elapsed before your letter was produced. Its compilation could not have required much more time than would have been necessary to copy a volume of the same size; for independent of the very little it contains relative to the biography of Fulton, it is hardly any thing more than the repetition of the arguments you have heard, over and over again, in opposition to the state grant. And I cannot perceive that you have been so fortunate as to strike out one new thought on that subject. You must acknowledge yourself indebted to the case of Livingston and others against Van Ingen and others, as reported in 9th Johnson, (to which you have referred) for the most of your ideas; nor can I see why you should have given yourself the trouble of transferring the arguments of the respondents'

counsel in that case from the pages of the reporter to your book, unless it be because in the form you have given them, they may be, if not so impartially at least more conveniently, put into the hands of the members of the legislature.

It was unnecessary for you to give yourself the trouble of writing and publishing, to let it be known that your legal opinions, on the questions which have been so frequently agitated in this matter, did not coincide with the opinions of Chancellor Kent, the Judges of the Supreme Court, and all the members of the Court of Errors. Your deadly hostility to the interest of Messrs. Livingston and Fulton, and to those who claim under them, you have heretofore lost no opportunity of manifesting. Those who from interest or principle advocate the validity of this grant, have always calculated on the full weight of your opposition; and however important your legal acquirements may have become, it is not yet believed there is reason to fear your opinion or wishes will preponderate against the judgments of men who have long been distinguished as able, experienced and learned professional characters.

I must beg you to observe, I do not allege that you have copied any part of your letter from what has been before written. On the contrary I admit that you have conveyed the ideas of others in a style that is your own. And I admit there is a

certain lofty pretension in your language which is no doubt extremely satisfactory to yourself, and will unquestionably have its admirers. But while I make this admission I must say, that your attention to dignity has sometimes left an obscurity in your meaning; and with the elegance of your composition is mixed a bitterness which I cannot think betrays a very happy disposition.

You seem to cherish an hostility to those against whom you have enlisted with so much zeal, which one would think must have some foundation deeper than the controversy in which you have engaged. You have, you say, ever been among the most forward to *admit*, that Messrs. Livingston and Fulton were entitled to the gratitude of the state. Upon what occasion you have evinced this disposition, I do not know; but if it be so, your conduct must remind one of the charity of the priest, who was never willing to bestow any thing but his blessing. We have only seen you foremost in every struggle which has been made to deprive the persons whom you affect to commend, of the reward which repeated acts of the legislature and the judgment of the highest tribunal in the country had assured to them. The publication I am now answering is a new instance of your efforts to accomplish the same object, and an additional proof of your determination to exert all the influence, which circumstances may

give you, in favor of those who under the most disgusting pretences, are endeavoring to prey on that property, to the protection of which the faith of the state has been so often and so solemnly pledged.

But the questions which I propose to discuss are too important to be mixed with what may be considered as relating personally either to me or to you. I shall therefore endeavor to refrain from any undue expressions of those feelings, without which, I am willing to confess, I cannot write or speak on this subject. I have no disposition to conceal my deep personal interest in the matter in controversy. Upon the faith of the laws granting and confirming the exclusive right, I have embarked all I am worth in the world. When these laws had received the sanction of five different legislatures ; when they had been approved both as just and constitutional by many of our most distinguished statesmen and jurists, and when, finally, they had received the unanimous judgment of the highest tribunal in our state, I invested in the property they professed to grant and to protect all the fruits of five and twenty years of the most unremitted and devoted application to a laborious profession. At a time of life, and with a constitution, which assure me that I could not so long pursue my accustomed habits of application as to be able to make any new provis-

ion for an advanced age, or the family I might leave, it must be expected that my present interest will influence my feelings. But if I know myself, it is not my personal interest alone that prompts me to vindicate the characters of Mr. Livingston and Mr. Fulton, and the rights which were granted to them. I knew these gentlemen well, I knew their virtues and their talents. I was proud to call them my friends. I well knew the difficulties with which Mr. Fulton had struggled before he attained any success. I knew the pecuniary embarrassments which they brought upon him; and which are all that his children have yet inherited and, should his enemies prevail, all they ever will inherit from him. I could not see the memory of such a man assailed as if he had been a vile impostor. I could not see him treated as if he had brought upon his country some baleful curse, when in every other part of the world he is respected as one of the greatest benefactors of mankind for what he accomplished here. I felt myself bound, and I do yet feel myself bound, to vindicate his character and to expose, so far as I am able, the injustice of the attacks which are made on the property of his children.

But if my personal interest, or a zeal to vindicate the rights and characters of my friends, have led me to express myself indecorously towards the committee of which you were a member, I regret

it. I owe to the other members of that committee this assurance, that I had no intention to speak of them with any disrespect, nor otherwise than as disapproving their report and the circumstances connected with it. You, sir, have no right to expect the same acknowledgment from me.

Although the language you have chosen to address to me would justify in retaliation almost any terms I might apply to you, yet I shall endeavour to express myself as little offensively as possible. I shall nevertheless be under the necessity of repeating the allegations, made in the Biography of Fulton, respecting the committee ; because, in the "*technical sense* of the terms," I believe them "true in fact." I shall appeal to your own book to prove them so. I very much deceive myself if I do not prove from your own book, to the entire satisfaction of every "undeluded, candid man," that what I said of the committee was correct.

I feel confident of convincing every person "not blinded by prejudice," that the committee did refuse to listen to the most earnest solicitations to delay their report, that Mr. Fulton might be sent for from New-York, and heard before them as Governor Ogden had been : That the committee stated in their report, what they represented to be facts, but of which they had no testimony before them : That they did in their report contrast with partiality the merits of Dod and Fitch with those

of Livingston and Fulton : That the committee were ignorant of the subject on which they affected to give the house information : and that in respect to the plan by which Chancellor Livingston proposed in the year 1798 to propel a boat by steam : and in respect to the boats built by Livingston and Fulton being the invention of Fitch, patented to him in 1791 : and in respect to Governor Ogden's boat being built on principles invented by Fitch and improved by Dod, I shall shew that the committee had no sort of testimony : that they did not ask for testimony, but were content with the representations of the petitioner.

I further intend to maintain, that the law which was recommended by the committee, was in effect a repeal of the exclusive grant to Livingston and Fulton, and was therefore inconsistent with the "faith, honor and justice of the state."

These are the charges, to repel which your letter is ostensibly written ; but that you might not lose such an opportunity of bringing forward the whole weight of your ability in opposition to the exclusive right, you have questioned the policy, the justice, validity, and constitutionality of the grant. And you have made objections to it on these grounds, not always indeed as proceeding from yourself; but you have presented some of them as points in the argument of Governor Ogden, which you have characterized as affording "conclusive reasoning."

This will therefore lead me into a consideration of these objections. And as you have transferred to your pages the arguments which you have so repeatedly heard urged in opposition to the exclusive grant, I will endeavour to put in the convenient form you have adopted the arguments which have been presented in support of its policy, justice, validity and constitutionality.

This course will afford me an opportunity of noticing, as incident to the several points which will be discussed, some of the matters in the Biography of Fulton that have given you offence. You are not, however, to expect an answer to your letter. There is much in it which affects me "as the idle wind which I respect not." And you may be assured, if I did not think it intended and calculated to have an undue influence on the decision of the questions which there is an avowed intention of again bringing before the legislature, I should not disturb the complacency with which you may regard its merits. I certainly shall not attempt to controvert your opinion of the Biography of Fulton as a literary production; because, though expressed with some ill-nature, it is, I think, just. No person can hold that work in less estimation than I do myself. And I have most sincerely regretted that the task I had to perform, did not fall to the lot of one who would have done more justice to my friend: The Biography has been justly characterized as the pro-

duction of an unpractised writer. It was also composed when I had more than one "indispensable professional engagement of interest and importance to occupy my attention." If in truth, however, you meant to practice any forbearance in your criticism, permit me to return it by a compliment. I assure you, I consider your style as the best part of your performance. Let me now also request your critical forbearance for these pages. They are the production of a few days, and written with a mind much embarrassed by necessary attention to other duties.

The objections which I shall consider to the laws or grants under which the representatives of Messrs. Livingston and Fulton claim an exclusive right to navigate the waters of this state by steam, are the following :

First : That the grant was impolitic, inasmuch as it was the grant of a monopoly.

Secondly : That it was made in derogation of the rights of John Fitch—the first law in favor of Mr. Livingston having been passed previous to the expiration of the time for which a like exclusive right had been granted to Fitch by a prior law.

Thirdly : That the first law in favor of Mr. Livingston, was passed on representations to the legislature which were "not true in fact." That consequently not only that, but all the subsequent laws passed in relation to the same matter, may be repealed consistently with the faith, honor and justice of the state.

Fourthly: That the state after the adoption of the federal constitution, had no power to make such an exclusive grant. Or if it had, that it cannot interfere with the rights which a patentee acquires under the constitution and laws of the United States, or with the powers which congress have to regulate commerce.

These, I believe, are all the objections that have been made to the laws, passed in favor of Mr. Livingston, or of Mr. Livingston and Mr. Fulton; considering them merely as granting an exclusive right. There are other objections to them, but they relate to the penalties and forfeitures by which it was intended to secure the enjoyment of the grant. These I shall state and consider in the sequel, confining myself at present to the objections above mentioned.

Before I enter upon the discussion, in the order I proposed, I beg to correct an error, which appears to me to have been committed by all the opponents of the exclusive grant. They seem to consider the representations of Messrs. Livingston and Fulton as questioning the *power* of the state to repeal the laws which conferred the exclusive right. But the advocates of that right have never denied such power in the legislature. The legislative authority, so far as it is not limited by the state or federal constitution, is supreme.—Undoubtedly a state *may*, at any time, under any circumstances, repeal any law it has passed. The

legislature may not only take from me and others the property we hold under the grants to Livingston and Fulton, but it may, if it please, take any other property we have acquired under any existing laws of the state. The question, therefore, is not concerning the power which the legislature had to repeal Fitch's law, or which it now has to repeal or in any way alter or modify the laws in favor of Livingston and Fulton; but it is to be determined what it may do consistently with those principles of policy and morality, by which all men, whether legislators or individuals, ought to be governed. When writing your book, you should have considered that you were not discussing some law quibble before an inferior tribunal, that might be embarrassed by the quotation of technical rules; but that you were appealing to the supreme power of a state, to exercise its highest authority, and calling upon it to execute what you conceived to be "consistent with faith, honor and justice." Let us then, "I beseech you," in the consideration of the questions now before us, endeavour to throw off those trammels, with which a constant recurrence, in the exercise of our profession, to technical rules, is apt to fetter our minds.

It is contended that the law, conferring an exclusive right, is impolitic, because it grants a monopoly. You have not been unaware of the reproach which this word carries with it, nor have you been unwilling to avail yourself of the preju-

dice it would be likely to create; although you ought to know, that it is not applicable to, nor descriptive of, the subject in question. Monopolies are the offspring of despotism, and can have their birth and being only, under arbitrary governments. In such, the monarch may grant, for his own private emolument, or to gratify the cupidity of favorites, exclusive privileges. These are called monopolies. And there is, very justly, that odium attached to them, which must attend every exercise of power intended solely for individual and not for general benefit. But can a grant, made upon good consideration, by a free representative body, exercising its delegated power in a manner that will, in its opinion, best promote the interest of the community, be identified with a grant, emanating from the will or caprice of a sultan or a king? or ought it to be described by the same opprobrious appellation? You well know, that in England exclusive privileges, conferred by the crown without the interference of the legislature, are only called monopolies. Your attempt, therefore, to enlist against the exclusive grants of this state, the prejudices connected with this odious appellation, I cannot but think a want of candor. When in your report, you endeavoured to excite the sympathy of the legislature in favor of the ancient ferry of Governor Ogden, why did it not occur to you, that, according to your meaning of the term, that grant was a monopoly? If the exclusive grant

to Mr. Livingston were a monopoly, why then are not all ferries, banks, toll-bridges and turnpikes, monopolies? That this word would be applied to the purposes for which it has been used by you, was anticipated in the eloquent address of Mr. Emmet, when heard at the bar of the legislature, as the counsel of the grantees, in opposition to Governor Ogden. Addresing himself to Mr. Fulton, he says, "artful speculators will assuredly arise, with patriotism on their tongues and selfishness in their hearts, who may mislead some future legislature by false and crafty declamations against the prodigality of their predecessors, who, calumniating or concealing your merits, will talk loudly of your *monopoly;* will represent it as a grievous burden on the community, and not a compensation for signal services; will exaggerate your fortune, and propose, in the language of Marat to the French convention, 'let the scythe of equality move over the republic.' In a moment of delusion, (unless some department of our government shall constitutionally interpose an adamantine barrier against national perfidy and injustice,) such men may give your property to the winds, and your person to your creditors."*****

"Yes, my friend, my heart bleeds while I utter it; but I have fearful forebodings, that you may, hereafter, find in public faith, a broken staff for your support, and receive from public gratitude a broken heart for your reward."

I beg you to observe, I do not mean to say or in any manner to insinuate, that you are one of the artful speculators described in this eloquent passage. I make the quotation merely to shew it was foreseen, that the word monoply would be made use of to awaken the prejudices and influence the judgment of the legislature.

It is true, as you have said, that the right of inventors to the enjoyment of their discoveries, is the offspring of a very refined state of society. And it is no less true, that even in that state, there are many whose feelings are so obtuse, and understandings so limited, that they are unable to comprehend the reason of permitting an exclusive enjoyment of the fruits of mere mental labor. They cannot stretch their intellects so far as to associate the idea of property, with any thing that is not tangible or visible. Indeed, the minds of some seem too contracted to entertain the notion, that any thing deserves the character or protection of property, without possessing the substantial form of chattels, houses or lands. Your letter, as it appears to me, presents an extraordinary instance of this mental bluntness. It is to be found in the friendly caution you have suggested to those, possessed of wealth, against the " impolicy of giving their countenance and support to the laws passed in favor of Livingston and Fulton ;" because, as you say, they afford " an example, which confounds the distinction between laws enacted for the secu-

rity of property and those passed to favor the accumulation of money." This is one of the many instances which your book affords, where I have to regret that your meaning is so much obscured by the beauty of your style. But so far as I can understand your language, I apprehend you mean to assert. that the laws, which secure to a man the house or the farm or the mill from which he acquires his money, ought to be respected more than the laws which authorise and invite him to apply his resources to the accumulation of wealth. If this be your meaning, I cannot but think it evinces not only that we have not yet arrived at that refined state of society, where a right to the enjoyment of the fruits of intellectual labor is admitted, but that we have not yet approached that state of civilization, in which it is seen and felt that one species of property, honestly acquired under the sanction of the laws of our country. demands as much respect and protection as another.

Thus your opinion would seem to be, that the acts which have been passed to establish banks, insurance companies, ferries, toll-bridges, turnpikes, manufactories, &c. in as much as they are all laws to favor the accumulation of wealth, should not be confounded in the public estimation, or in the estimation of the legislature, with the laws enacted for the security of property of a different description. This, it appears to me, is a remarkable evidence of the bias which prejudice can give the human mind,

and of the influence which habit can have on its perceptions. I have heard of a singular instance of one kind of property and not another, commanding the respect of a people. Potatoes have been long known in Ireland, and were for a great length of time, the principal food of a large portion of its population. The right of property in potatoes, was held in such respect by every class of the Irish people, that they might be raised in the highways, by the road side, without danger of molestation from any but the rightful owner. When turnips were first introduced, they were not considered as a necessary ; and there were many of the Irish people, who had not attained that refined state of society, in which a property in luxuries is recognized. It was difficult, therefore, to inspire the people with any respect for this new vegetable. It was liable to be stolen wherever it was to be found, and was not safe, even when raised at the threshold of the cabin of the owner.

But I shall not say more on the policy of the laws under which the exclusive grant is claimed, nor as to the respect to which they are entitled. In answer to the doubts you have expressed on these points, I will extract from the opinion delivered by Chancellor Kent, in the case of Livingston against Van Ingen, his sentiments on this subject. And though his legal opinion has not the good fortune to meet your approbation, perhaps his sentiments as to the feelings with which

"every friend to his country's honor" should regard the grants to Messrs. Livingston and Fulton, you may think entitled to some respect. "Permit me," says the Chancellor, "here to add, that I think the power has been wisely applied, in the instance before us, to the creation of the privilege now in controversy. Under its auspices the experiment of navigating boats by steam has been made, and crowned with triumphant success. Every lover of the arts, every patron of useful improvement, every friend to his country's honor, has beheld this success with pleasure and admiration. From this single source the improvement is progressively extending to all the navigable waters of the United States, and it promises to become a great public blessing, by giving astonishing facility, despatch and safety, not only to travelling, but to the internal commerce of this country. It is difficult to consider even the known results of the undertaking, without feeling a sentiment of good-will and gratitude towards the individuals by whom they have been procured, and who have carried on their experiment with patient industry, at great expense, under repeated disappointments, and while constantly exposed to be held up, as dreaming projectors, to the *whips and scorns of time.* So far from charging the authors of the grant with being rash and inconsiderate, or from wishing to curtail the appellants of their liberal recompence, I think the prize has been dear-

ly earned and fairly won, and that the statutes bear the stamp of an enlightened and munificent spirit."

I beg leave, also, to refer to some resolutions of the state of Louisiana, for similar sentiments on this subject ; a copy of which I shall subjoin.

It must be recollected that the exclusive grant to Messrs. Livingston and Fulton in a part of the waters of the Missisippi, was made after the first boat had been put in operation on the Hudson, and after they had ascertained the complete success of their plan. If, then, this grant from Louisiana merited the protection of that state : if the attempt to deprive the grantees of their exclusive privilege in the Missisippi, demanded the terms of reprobation used by that legislature, what would be the language which the conduct of this state would justly call forth, if it were to destroy the grant, which was made for the purpose of encouraging the grantees to expend large sums of money, in pursuit of an object, which it was well known, had been considered by many philosophers as a chimera ; which had for a length of time eluded the eager pursuit of men the most distinguished for their science, and which, even those who made the original grant, felt confident, was the mere delusion of an enthusiastic genius.

The second objection against Messrs. Livingston and Fulton to the exclusive right is, that the original act in favor of the former gentleman, that

is, the act of 1798, was in derogation of the rights of John Fitch, in whose favor the legislature of this state, in the year 1787, passed a law granting him an exclusive right to navigate the waters of this state by steam, for a term of fourteen years from the passing of the act; of which term about ten years only had expired when the act of 1798, in favor of Mr. Livingston, was passed.

Before I consider this objection I must be allowed to notice one of the numerous accusations you have brought against me: that I have, in the manner of my quotations and references to the documents and proceedings relative to the Steam Boat controversy, endeavoured to conceal matters which were necessary to give an impartial view of the subject.

You say, that in the life of Fulton I have so expressed myself, as to induce a conclusion that no law whatsoever existed in this state on the subject of steam navigation, prior to that passed in favor of Mr. Living·ton in 1798. That this accusation is entirely unfounded and unjust, I think you will have the candor to admit, if you will turn to the 238th page of the life of Fulton; where you will find, I have stated that Governor Ogden's application to the legislature was, among other things, founded on acts granting an exclusive right to John Fitch, which had been passed by the legislatures of New-York and New-Jersey, in the years 1786 and 1787. It is impossible that I

could have had any design to mislead as to this fact, when I had given this reference by date to the statute book, to which I knew every one who felt any interest in the subject might recur.

But to proceed. It must be remembered, that the act of March, 1787, granting to Fitch an exclusive right, was founded, as its recital shews, on a representation by him to the legislature, that "he had constructed an easy and expeditious method of impelling boats by the force of steam." "In order to encourage so useful an improvement and discovery, and as a reward for his ingenuity, application and diligence," they granted to him an exclusive right for fourteen years.

Mr. Fitch did not ask the interposition of the legislature, to enable him to pursue experiments for maturing a project which he had conceived; but he founded his claim to the favor of the state on his having actually established a beneficial mode of steam navigation. The legislature, to reward his success and secure to itself benefit from an invention of so much utility, gave him an exclusive right. It cannot be questioned that a part of the consideration of this grant, was the expectation, that Mr. Fitch would, in a reasonable time, employ on the waters *of this state*, his method of impelling boats. That he had constructed a boat in Pennsylvania, or that he would navigate the waters of that state, or of any other of the United States, by Steam Boats; never could have been an

inducement with the legislature of this state to favor him with an exclusive right. For, can it be supposed, that any legislature would have excluded every person but the grantee from making an attempt to introduce a kind of navigation so earnestly desired, if they had not intended he should avail himself of his privilege in a reasonable time? It seems to me absurd, to suppose that the legislature, which passed the law in favor of Mr. Fitch, intended or contemplated that he was to have the whole fourteen years to put his plan in operation within the territory of this state. The very nature of the grant excludes such a supposition; for, if he was to derive a benefit from it, that benefit could only result from his using it previously to its expiration. And that benefit must have been in proportion to the length of time in which he, exclusively, enjoyed the exercise of his right. It seems to follow then, that the exclusive grant to Mr. Fitch, was upon a condition, implied if not expressed, that he should avail himself of it, and give the state the benefit of his ingenuity, by introducing steam navigation on the waters of this state within some reasonable time. If such were the conditions of the grant, it would seem not to admit of a doubt, but that the state had a right to repeal it in 1798, when they gave similar privileges to Chancellor Livingston. When I speak of right, I do not mean power; I mean that right which rests on moral obligation and moral

duty. To decide this question, we must appeal to facts; and I shall insist on none that are not incontrovertible or admitted by yourself.

It is contended that Mr. Fitch, some time between the years 1786 and 1790, constructed a steam boat, which performed to his satisfaction on the Delaware; and that in this boat was an application of that easy and expeditious method of impelling boats by steam, which in 1787, Mr. Fitch represented to the legislature he had discovered.

I am perfectly willing to admit, so far as relates to this part of the discussion, that there was no reason to question the perfection of Mr. Fitch's invention, or the performance of his boat. But as to these points, I must be permitted to extract from the biography of Mr. Fulton, some arguments calculated to raise some doubts, at least, whether the construction and performance of Mr. Fitch's boat were such as they have been represented.

"No attempt that deserves notice has ever been made in our own country, upon which any claim, adverse to Mr. Fulton's has been pretended, except one, of which a Mr. Fitch, a very ingenious mechanic, was the projector, and which was made on the Delaware, in the year seventeen hundred and eighty-three, subsequently it will be observed, to the experiment of the Abbé Arnald; so that if Mr. Fulton is not entitled to be considered

as the inventor of steam boat navigation, because he was not the first to think of it, for the same reason Mr. Fitch cannot have that merit.

"Mr. Fitch's boat was propelled by paddles and not by wheels.

"Mr. Fitch was supported by an association of wealthy men, who themselves witnessed the performance of his boat, who had advanced large sums of money, which were expended upon her, and the reimbursement of which depended on her successful operation. There was at least one of this association, who would not be pleased to be considered in any, but the first rank of mechanicians; yet this vessel and the project were entirely laid aside, after the vessel had been moved by her machinery several times, for some distance up and down the Delaware river. It must be remarked, that this abandonment was made by Mr. Fitch and his associates, after he had obtained an exclusive right to navigate not only the waters of the state of Pennsylvania, but of this state and of several states in the union. Was this experiment of Mr. Fitch and his associates, or any of the British experiments, successful? If they were, how came they to be abandoned? How comes it that for years and years they were not thought of, and that the memory of them was not revived, until after Mr. Fulton's boats were seen in successful operation.

"There is another fact, in relation to Mr. Fitch's

boat, which it would seem must be a conlusive answer to any thing that can be urged in his behalf in opposition to Mr. Fulton's claims, in regard to the practical introduction of steam navigation.

"Mr. James Rumsey, an extremely ingenious American, who knew well all that Fitch had done, and had been engaged in a controversy with him in this country, relative to the boat built on the Delaware, some time after Mr. Fitch had relinquished, or abandoned his project, went to London. With the pecuniary aid of a wealthy American, and several monied men, he built a steam boat on the Thames. She was to be propelled by the engine's working a vertical pump in the middle of the vessel, by which the water was to be drawn in at the bow, and to be expelled at the stern through an horizontal trunk in her bottom. But this boat was in her turn abandoned without ever having been in successful operation. Can it be believed, that if Mr. Fitch had constructed a steam boat that was capable of performing to any useful purpose, Mr. Rumsey would have so entirely failed ? or that if he had seen the successful operation on the Delaware, of such water-wheels as are now used on the Fulton boats, he would afterwards have resorted to the unpromising means of propelling his boat, which he adopted ?

"But perhaps, the most satisfactory evidence of the success which attended these attempts, will be found in a communication of a gentleman of sci-

ence, who had the best opportunities of knowing what had been done in America on this subject, and who was called upon for information in relation to it, at a time when neither interest, jealousy, or controversy, could have created prejudice or bias.

"A society in Rotterdam had applied to the American Philosophical Society, to be informed whether any and what improvements had been made in the construction of steam engines in America. The subject was referred to Mr. Benjamin H. Latrobe, who on the twentieth of May eighteen hundred and three read to the Philadelphia Society a report, from which as it is recorded in their transactions, the following are extracts:"

"During the general lassitude of mechanical exertion, which succeeded the American revolution, the utility of steam engines appears to have been forgotten; but the subject afterwards started into very general notice, in a form, in which it could not possibly be attended with much success. A sort of mania began to prevail, which indeed has not yet entirely subsided, for impelling boats by steam engines. Dr. Franklin proposed to force forward the boat by the immediate action of the steam upon the water. Many attempts to simplify the working of the engine, and more to employ a means of dispensing with the beam, in converting the libratory into a rotatory motion, were made. For a short time a passage boat,

rowed by a steam engine, was established between Bordentown and Philadelphia; but it was soon laid aside. The best and most powerful steam engine which has been employed for this purpose (excepting perhaps one constructed by Dr. Kinsey, with the performance of which I am not sufficiently acquainted,) belonged to a few gentlemen of New-York. It was made to act by way of experiment, upon oars, upon paddles and upon flutter-wheels: nothing in the success of any of these experiments appeared to be sufficient compensation for the expense, and the extreme inconvenience of the steam-engine in the vessel.

"There are, indeed, general objections to the use of the steam-engine for impelling boats, from which no particular mode of application can be free. These are:

"First—The weight of the engine and of the the fuel.

"Second—The large space it occupies.

"Third—The tendency of its action to rack the vessel, and render it leaky.

"Fourth—The expense of maintenance.

"Fifth—The irregularity of its motion, and the motion of the water in the boiler and cistern, and of the fuel vessel in rough water.

"Sixth—The difficulty arising from the liability of the paddles or oars to break, if light, and from the weight, if made strong.

"Nor have I ever heard of an instance, verified

by other testimony than that of the inventor, of a speedy and agreeable voyage having been performed in a steam boat of any construction.

"I am well aware, that there are still many very respectable and ingenious men, who consider the application of the steam-engine to the purpose of navigation, as highly important and as very practicable, especially on the rapid waters of the Missisippi; and who would feel themselves almost offended at the expression of an opposite opinion. And perhaps some of the objections against it may be avoided. That founded on the expense and weight of the fuel, may not, for some years, exist on the Missisippi, where there is a redundance of wood on the banks; but the cutting and loading will be almost as great an evil."*

"After this testimony, it is impossible now to make it be believed that either Fitch or Rumsey constructed a steam boat which was capable of being advantageously used, and that they abandoned their projects after they had been accomplished, for want of patronage, or pecuniary assistance. Mr. Fitch and Mr. Rumsey were unquestionably very ingenious and enterprising mechanicians: they saw, as thousands of others have seen, since the power of steam has been known, that it might be applied to navigation; but they did not know how to make the application. Like

* Transactions of the American Philosophical Society, vol. 6. part 1st, p. 90, 91.

many other projectors who have followed them, they wanted that rare union of genius and science, with *practical knowledge*, which Mr. Fulton so happily possessed. These qualities separately employed, have been the parents of a million of absurd and abortive attempts in every branch of mechanics. The man of genius and science may amuse himself with inventions and calculations ; but his best theories may fail if he does not know how they should be executed. On the other hand, the mere practical mechanic often relies on his capacity to combine the powers with which his daily employment makes him familiar ; and he sets about constructing a machine, which he persuades himself will answer his wishes, though he can make no calculation as to its power or the effect it is to produce, and is not able to explain a single principle on which it is to act."

We learn from the memoirs of Dr. Lettsom, (which were published in this country while the life of Fulton was in the press) that Doctor William Thornton, the gentleman who is now at the head of the Patent Office, was one of the company concerned in Fitch's boat. He witnessed all the experiments made with her. Doctor Thornton, in 1788, wrote a letter to Doctor Lettsom on the subject, an extract from which, taken from the memoirs of Doctor Lettsom, will be found in the appendix to the life of Fulton. In this letter, Doctor Thornton says—" I purchased four shares,

" or one tenth, of Fitch's discovery. The boat is to
" be tried this evening or to-morrow, and I will
" endeavour to give thee an account of it. Ours is
" moved by paddles, placed in the stern, and mo-
" ved by a small steam engine. We have exclu-
" sive patents from Pennsylvania, New-Jersey
" and New-York, in which are included the prin-
" cipal rivers."

Now, it does not appear that Doctor Thornton ever did give to Doctor Lettsom an account of the contemplated experiment, which it is reasonable to suppose he would have done if it had answered his expectations. But from that time, Fitch's project was abandoned.—It could not have been, (as it has been alleged with a design of exciting a sympathy which might have its influence) on account of Mr. Fitch's poverty; because his interest was transferred to a company by which it was backed, which there is no reason to suppose wanted pecuniary means for pursuing Mr. Fitch's plan to any degree of perfection of which it appeared to them to be capable. May I not then again ask, was this experiment of Mr. Fitch *and his associates* successful? if it were, how came it to be abandoned? how came it, that for years and years it was forgotten, and the memory of it was not revived till many years after Mr. Fulton's boats had been in successful operation?

While I am speaking of Mr. Fitch's merits, I must beg leave to notice, that he has not an undis-

puted claim to be the first who applied in this country the method which he used of propelling boats by steam. The letter from Doctor Thornton, to which I have above referred, asserts, that Mr. Fitch was the inventor which he claimed to be; while on the other hand, a letter from the late venerable and respected Dr. Rush, of Philadelphia, to Dr. Lettsom, which will also be found in his memoirs, and is inserted in the appendix to the life of Fulton, asserts as confidently that Mr. Rumsey was the inventor of the mode of applying the steam engine to boats which was used by Fitch. There is in the archives of the Historical Society of New-York, a pamphlet, published by Mr. Rumsey, in January, 1788, in which he attempts to prove, by a number of affidavits and certificates, that Mr. Fitch was entirely indebted to him for the invention of the steam boat which he (Mr. Fitch) constructed.

From these certificates, among which there is one from the late General Gates, it appears, that Mr. Rumsey, on the third of December, 1787, made an experiment on the Potomac, with a steam boat which he had constructed, and that she moved against the current at the rate of three miles an hour. It also appears by an extract of a letter from General Washington to Mr. Rumsey, that as early as March, 1785, Mr. Rumsey had communicated to him some ideas on the subject—That when Mr. Fitch applied to General

Washington for an introductory letter to the assembly of Virginia, General Washington declined giving it, assuring him that his thought was not original; and that Mr. Rumsey had before mentioned to him (General Washington) this application of steam. At least, such is the statement of Mr. Rumsey in the pamphlet I have mentioned. I know that Mr. Fitch published, as you have observed, an answer to this pamphlet. But I have never seen it. A copy of it I know was in the possession of Governor Ogden. I do not give or profess to have any opinion as to the merits of these respective claims. I sincerely believe that neither of them produced any thing that could have been practically useful, or that was more valuable than had resulted from similar attempts previously made in Europe, which I shall notice in the sequel. If they did, or if (as the committee state in their report) "the steam boats, built by Livingston and Fulton, are in substance the invention of John Fitch, patented in 1791," how has it happened, that in all the attempts to evade the patent of Mr. Fulton in the waters of the Ohio, the Missisippi, the rivers of Virginia, and the Carolinas, no one has ever adopted the plan "patented to John Fitch in 1791," drawings of which are in the Patent Office, or that paddle boat of which you have exhibited a drawing in your appendix? Their doing so would have prevented all possibility of litigation, and, as

the committee imagine, would have produced as good an effect. But I have not the least disposition to controvert the merits of Mr. Fitch. From all I have ever heard or learned respecting him, I believe he was a man of uncommon natural genius, and great mechanical ingenuity. If it be true that he died in poverty and broken hearted, I sincerely lament that he is one whose name is to be added to the list of those who have found, that merit has so little power to command the smiles of fortune. But while this sympathy may be justly due to Mr. Fitch, let not envy, jealousy or cupidity harden our hearts against all feeling for the fate of Fulton. He fell a sacrifice to his labour and ingenuity. He died immensely in debt, incurred by the pursuit, to which he was encouraged by those acts of the legislature now under consideration. And nothing can rescue his family from the embarrassments he has left, but that protection and support from the state, which, after the legislative transactions of 1814, he had so much reason to suppose were secured.

I must be pardoned for having been led by a desire to notice the facts above stated into some digression. I resume the consideration of the objection against the grant to Mr. Livingston, founded on its interference with the previous grant to Mr. Fitch.

I will admit, as I have said, for the purposes of this argument, that Mr. Fitch's boat was all that

you desire it should appear to have been. Does it thence follow that there was any injustice in resuming the privilege granted to him, when he had omitted to avail himself of it for more than ten years? If Mr. Fitch had constructed a boat which was equal to the representations he made to the legislature in 1787, and had, at the time that his grant was within three years of expiring, neglected, notwithstanding his success, to exhibit or even to make an attempt to exhibit, such performance, on the waters of this state, the legislature was perfectly justifiable in resuming a privilege which they had conferred, with an intention of its being used, on one who would make no use of it, and in granting it to another who they had every reason to believe would, if in his power, avail himself of the benefit.

Suppose Mr. Fitch's boat had been found as capable of being beneficially employed as Mr. Fulton's now are; and that such boats had been put in operation on the waters of Pennsylvania, and the rivers of our sister states; but that, through the influence of some rival state, or for some other reason, Mr. Fitch had not chosen to employ any boat on the waters of this state. Let it be further supposed, that when the sister states had been for ten years enjoying all the advantages of this great invention, you had been a member of the legislature, and Chancellor Livingston, or any other person, had represented to you, that he was willing to in-

cur the expense of building and putting in operation steam boats on our waters, but that he was deterred from doing so by the existence of the act in favor of Fitch. What would you have said? Would you have told the Chancellor, that though Fitch had not thought proper to avail himself of this grant, yet that the state must be content to forego the advantages they might otherwise have enjoyed until the time limited for the expiration of the exclusive right? No! I am convinced that this would not have been your language: and notwithstanding the strong prejudices you have imbibed against the claimants, under the rights of Livingston and Fulton, I do not believe it would even now be your deliberate judgment. I am confident you would say, in such a case as I have supposed, that the exclusive grant to Mr. Fitch must necessarily be understood to have been, upon condition that he should within a reasonable time give the state the benefit of his invention; that he should in a reasonable time, employ his boats on our waters, and that if he had failed to do so, it was perfectly just the state should resume the grant.

Now the act passed in favor of Mr. Livingston, in 1798, recites that it had been suggested that Fitch "was either dead or had withdrawn himself from this state, without having made any attempt in the space of more than ten years for executing the plan for which he had obtained an exclusive

privilege." Was not this suggestion or recital "true in fact?" Were not (to use the words of the act) "the employment and navigation of boats impelled by the force of steam or fire, within the jurisdiction of this state," that for the execution of which he obtained his exclusive privilege? Was not this the useful improvement which it was the object of the act to encourage? Or, will it be contended, that the intention of the legislature was fulfilled, and that the condition of the law was satisfied, by Fitch's having constructed a boat in Pennsylvania and moved her on the waters of that state? Nay, would the object of the legislature of our state have been accomplished if Fitch had covered the waters of the sister states with steamboats as perfect as the boats that now navigate the Hudson? I am persuaded that these questions cannot by any reasonable man be answered in the affirmative. If so, then those suggestions in the act in favor of Livingston were true in fact. "That Fitch had withdrawn from the state and had died abroad is admitted, and it has never been contended that he made any attempt to execute his plan on the waters of this state. Under these circumstances the legislature were certainly warranted in the conclusion which they have expressed in the act of 1798, that the exclusive privilege granted to Fitch was "justly forfeited."

But let us suppose that it were not so. Let us suppose there was injustice in repealing Fitch's law

and in conferring on Chancellor Livingston the privileges previously granted to Fitch. The injustice being towards Mr. Fitch or his representatives only, no other person had any right to complain. If the law in favor of Chancellor Livingston interfered with a prior grant, the prior grantee or his representatives might with great propriety maintain that the subsequent grant, so far as it had deprived them of any advantage was unjust. But to authorize Mr. Fitch or his representatives to make this complaint, they must have shewn that he or they had attempted, or at least intended to avail themselves of the exclusive privileges conferred by the act under which they claimed. This never was and never could have been pretended. In 1799, two years before the expiration of the time limited for the duration of Fitch's exclusive privilege, this first grant to Mr. Livingston, by reason of the condition not being fulfilled, expired. Why did not Fitch, or his representatives or his associates, the company formed with a view to enjoy the benefits of his exclusive privilege, in this very state, why did not they then prefer their claim, or object to the passing of a new law in favor of Mr. Livingston? In June 1801, the second grant to Mr. Livingston expired for the same reason; and there was no other grant till 1803. Here was an interval of two years, when there was no law to interfere with any pretensions that might have been made under Fitch's grant. Why did not he, or

his representatives or that company, at this time make some claim, or some attempt to execute his plan? In April 1805, the grant in favor of Mr. Livingston and Mr Fulton became extinct, in consequence of a failure to perform its conditions, and was not renewed till April 1807. Here was another interval of two years when the waters of this state were as open to Fitch, or his representatives or associates, as if no exclusive grant had ever been made. Why, within this time, was not the claim of Mr. Fitch, or of his representatives, or of his company, exhibited, or at least an intention of executing his plan manifested? The answer is obvious: It was not till after this, that Fulton's first boat was seen in successful operation. For the pretensions of Fitch were unthought of till they were purchased at the price of ten dollars, from some one assuming to be his administrator, that they might be brought forward in support of a speculation on the hard earned property of Mr. Livingston and Mr. Fulton.

If, after the expiration of ten years from the grant to Fitch, no attempt was made to execute the plan for which he obtained the exclusive privilege: If the project was entirely abandoned by the grantee, or those associates who might have claimed under him, there was no injustice in repealing the original grant, because no one suffered injury by such repeal. There are no technical rules of law to embarrass this part of the contro-

versy. The question with respect to the repeal of the law in favor of Fitch, and the question with respect to the laws in favor of Livingston and Fulton, depend on the same considerations, what is *right* and what is *just*. The power of the legislature is undeniable : And I humbly hope, that I have shewn that the repeal of the law in favor of Fitch, was a just exercise of that power.

Governor Ogden understood himself too well not to foresee the objection, that no one but Fitch or his representatives, could complain of the repeal of the first steam boat law passed by this state. To arm himself against it what does he do ? He makes himself a representative of Fitch. How ? Fitch, as was alleged by Governor Ogden himself, died abroad ; and as was also alleged by Governor Ogden, died in poverty, leaving no property that ever was heard of. Governor Ogden, very shortly before he presented his memorial to the legislature of this state in 1814, procured a person who was, or claimed to be, a creditor or relative of Fitch, to consent to become his administrator. And some fifteen or twenty years after the death of Fitch, administration was granted by New-Jersey, though Fitch never lived in that state, though he did not die there, and left no property within its jurisdiction or any where else. Governor Ogden then, that is thirteen years after the expiration of the time limited by the act in favor of Fitch for the duration of his exclusive priv-

ilege, procured from the above mentioned administrator an assignment "of all Fitch's right to employ his steam boat in the waters of this state or elsewhere;" and the consideration expressed in the deed of assignment is the sum of ten dollars. You comment with much good natured commisseration for my feelings, on my remark, that success in New-Jersey had convinced the petitioner that in every numerous assembly, there were men whose envy and ignorance would give a chance of success to any proposition to take from genius its credit or reward. As to the correctness of that remark, I shall let it be judged of by the reflecting observer of human nature; but I now ask you, what must have been Governor Ogden's opinion of the legislature of the state of New-York, when he hoped to influence them by such contrivances? His appeal was to the "justice and magnanimity of a great and powerful state:" And yet his proceedings resembled an application to some petty tribunal, in which he expected success by confounding the merits of his case with some technical forms that could have no relation to its justice. Nor was Governor Ogden totally mistaken in his calculations as to the effect he might produce by enveloping his cause in these flimsy coverings. For the committee, among the circumstances which, in their opinion, gave Governor Ogden a claim to the interposition of the legislature, mention the title which he derived by

an assignment from the administrator of Fitch !! Is this one of the grounds upon which Governor Ogden prayed for the interposition of the legislature—which, if I had stated fully, my "learned auditors and my unlearned readers would have discovered, that he had 'grounds more relative,' as well as more honorable to himself and to his cause, for anticipating success, than those which I have ascribed to him." If you intended to insinuate that I suppressed this fact with a design to conceal a part of the merits of his claim, I suspect you will now be willing to admit, that in this instance you did me great injustice. You may now be willing to believe that I omitted to notice this circumstance, only because an explanation of it would have been too long for such an occasion. And I do assure you, I feel very much obliged to you, for having given me an opportunity to set the whole merits of this part of Governor Ogden's claim in their true light.

A third objection to the exclusive right is, that the act of 1798, in favor of Mr. Livingston, was passed on unfounded suggestions—That, therefore, it was invalid, and that all the subsequent acts are so dependent on the first, that as it did not convey a valid title, none of the others could do so.

In the report of the committee of 1814, it is said—"And your committee are further of opin-
"ion, that the suggestions contained in the act of

"27th March, 1798, repealing the act granting "the exclusive right to use steam boats within "this state to John Fitch were not true in fact, "the said Robert R. Livingston not being then "the possessor of a mode of applying a steam "engine to propel a boat on new and advanta- "geous principles. And the said John Fitch, "having made a successful attempt for executing "his plan of a steam boat and having actually "obtained a patent therefor."

In the life of Mr. Fulton, there are the following passages in relation to this part of the report: "They (the committee) further reported, that the recitals in the act of 1798, granting to Robert R. Livingston an exclusive right, were not true; he not having then been in possession of a mode of applying a steam engine to propel a boat on new and advantageous principles as he had represented; and Fitch having previously constructed a steam boat, and obtained a patent for it.

"That part of the report, stating that the recitals of the act of 1797 are untrue, is much more unpardonable than the mistakes of ignorance. They say, it is untrue that Mr. Livingston was then, as these acts recite he had represented, in the possession of a mode of applying the steam engine to boats, on new and advantageous principles; because Fitch had previously obtained a patent. Does it thence follow that Mr. Livingston might not have had a mode of applying the engines to boats, different

from Fitch's? and might not this mode have been new and advantageous?

"How shocking is this imputation, so obviously unmerited, on the veracity of a man, who lived as respected as beloved! to whom as a patriot, statesman, philanthropist, and philosopher, society owed the highest obligations; whom she had intrusted with her dearest interests, and on whom she had conferred the highest honors. The hall, in which this reproach was uttered, had but recently been hung with emblems, to shew that a people mourned his death. Every generous feeling must revolt at such language, at such a time, applied to such a man."

These passages have excited a great deal of your indignation; and you accuse me of perverting your meaning by having in my reference to the report of the committee, represented them as having said simply that the suggestions on which the act of 1798 was founded, were not *true:* whereas the words of the committee are, that these suggestions were "not true *in fact.*" For having omitted these two little, but in your estimation, important words, I am, with as much decency as consistency, accused of having endeavoured to excite an odium against the committee, of artifice, and of a variety of other high crimes.

From your letter we are given to understand, that these words, "*in fact,*" when they stand in connection with the other emphatic words of the

sentence, "not true," have a certain technical meaning, and that the meaning of the words, "not true," when used in connection with the technical words, "in fact," have a very different meaning from what they would import if they were used without the latter softening and qualifying expressions. So that it seems, the words "not true in fact," have a sort of "technical sense" in which they were used by the committee. Permit me to say, I am rejoiced to find that the committee did not intend to cast that reproach on the memory of Chancellor Livingston, which their language, as I understood it, conveyed. I rejoice to find that the homage due to the talents and virtues of that patriot, statesman, philosopher, and philanthropist, who will long live in the grateful remembrance of his countrymen, can be extorted even from those that have shewn a marked hostility to his interest. But I believe I shall be excused for attaching to the language of the committee a meaning different from what it now appears, they design to convey. I did not know that the addition of the words, "in fact," could have the diluting effect, which it seems, the committee intended. If I had contradicted a person, by telling him that his relation was not true in fact, I was not aware it would have been less derogatory to his veracity than if I had said simply it was not true. I regret to say that I was not lawyer enough to know that the expression, not true in fact, has a technical sense:

and I therefore did not understand, that the committee purposed to use it in that sense. Indeed, I think I may, without subjecting myself to the accusation of an intention to excite odium against the committee, complain (as their report was made for the information of many, who like myself, were unacquainted with all the niceties of technical language) that they did not give some explanation or intimation of their using the words in question in a sense so different from their common acceptation. For want of such explanation, I am convinced that the report has been very generally understood as intending to convey a most injurious imputation. Indeed, in the sense you give to the expressions, it should not have found place in your report at all. For the untruth of representations sufficient to annul a patent or affect a grant from the state, is not merely a technical untruth, but one that was deceptive and fradulent, and injurious to the public.

But let us consider this part of the report of the committee, as we now learn they intended it should be understood. It will lead to a full discussion of the objection to the exclusive right, that the first act was passed on untrue suggestions. The committee say, the suggestions were not true in fact, because it appears from the recital of the statute, that it had been represented to the legislature, that the Chancellor was in possession of a mode of applying the steam engine to propel a boat, on new and advantageous principles. The commit-

tee concluded that this representation was not true in fact, because, though the Chancellor might have been the possessor of a mode of applying a steam engine to propel a boat, yet his representation was false in fact; in as much as his mode could not have been new and advantageous, John Fitch having made a successful attempt for executing his plan of a steam boat, and having actually obtained a patent therefor. I cannot but think the conclusions of the committee would appear very illogical, even if their premises were admitted. But, by a little consideration, it will be perceived, that the whole foundation of their reasoning fails, for it does not appear from the act of 1798, that it ever was represented to the legislature, that the Chancellor was in the actual possession of a mode of applying a steam engine to propel a boat, which he knew would have the desired effect, or which he had ascertained would be advantageous. Notwithstanding some expressions in the recital of the first act in favor of Chancellor Livingston, passed in 1798, if we take into consideration the whole act in connection with the recital, it is impossible to suppose that the legislature which passed that act, understood from the representations which were made to them, that Chancellor Livingston was then in the possession of a mode of propelling a boat which he had tried, or which he knew would be advantageous, or which he had ascertained would answer his sanguine expectations.

The title, preamble and first clause of the act of 1798, are in the following words :

"An act repealing an act, entitled "an act for granting and securing to John Fitch the sole right and advantage of making and employing the steam boat by him lately invented," and for other purposes."

"Whereas it hath been suggested to the people of this state, represented in senate and assembly, that Robert R. Livingston is possessor of a mode of applying the steam engine to propel a boat on new and advantageous principles, but that he is deterred from carrying the same into effect by the existence of a law, entitled "an act for granting and securing to John Fitch the sole right and advantage of making and employing the steam boat by him lately invented, passed the nineteenth day of March, one thousand seven hundred an eighty-seven," *as well as by the uncertainty and hazard of a very expensive experiment*, unless he could be assured of the exclusive advantage of the same, *if on trial it should be found to succeed* : And whereas it is further suggested, that the said John Fitch is either dead or hath withdrawn himself from this state, without having made any attempt in the space of more than ten years, for executing the plan for which he so obtained an exclusive privilege, whereby the same is justly forfeited :— Therefore,

Be it enacted by the people of the state of New-

York, represented in senate and assembly, That the act aforesaid be and is hereby repealed; *and to the end that Robert R. Livingston may be induced to proceed in an experiment which, if successful, promises important advantages to this state,—Be it further enacted,*" &c.

The committee treat this as if it were evidence of a representation having been made, that Chancellor Livingston was in possession of a mode of applying the steam engine on new principles, which he had ascertained would propel a boat advantageously. But may we not appeal to "any unbiassed and unprejudiced mind," whether, in stead of any such meaning being conveyed by the preamble, it is not most manifest, from the very preamble itself, and more particularly from the first clause of the act, that the legislature well understood that tho' the Chancellor confidently expected success, yet he had not ascertained that he could command it. They knew, what you have so explicitly admitted, that he had expended large sums of money in repeated essays to reduce his system to practice. They knew he was about to make further "*uncertain, hazardous* and *expensive experiments,*" "*which, on trial, might not be found to succeed.*" And the act was passed, "*to the end that he might be induced to proceed in an experiment, which, if successful, promised important advantages to the state.*" The words marked as quotations are taken, it will be observed, from the preamble and the first clause

of the act. They preclude the possibility of a supposition that the legislature passed the first act in favor of Mr. Livingston, under the impression that he had considered or represented himself to be in possession of a mode of applying steam which he had tried and ascertained beyond any doubt.

Let us remark the difference between this act and the one in favor of Fitch; a difference which you yourself have noticed. The title of the act in favor of Fitch, is as follows: "an act for granting and securing to John Fitch, the sole right and advantage of making and employing, for a limited time, the steam boat by him lately invented." The preamble to that act is in these words:

"Whereas John Fitch, of Bucks county, in the state of Pennsylvania, hath represented to the legislature of this state, that he hath constructed an easy and expeditious method of impelling boats through the water by the force of steam, praying that an act may pass, granting to him, his executors, administrators, and assigns, the sole and exclusive right of making, employing and navigating all boats impelled by the force of steam or fire, within the jurisdiction of this state, for a limited time: Wherefore, in order to promote and encourage so useful an improvement and discovery, and as a reward for his ingenuity, application and diligence—*Be it enacted*," &c.

It is impossible not to perceive and admit the different characters of the two acts. The first was, in

effect, a patent granted for a discovery which, it was represented, had not only been made, but had been applied to a boat that was then already built. The grant was made to Fitch, not to induce him to proceed in an "*uncertain, hazardous and expensive experiment,*" but to reward him for his ingenuity, application and diligence," in having perfected an "easy and expeditious method of propelling boats through the water by the force of steam," which he represented to the legislature he had effected. On the contrary, the act of 1798, in favor of Mr. Livingston, was passed when it was known that Mr. Livingston had been expending much time and money to accomplish the object, which Fitch thought he had attained. And it was passed, not to reward him for labor and diligence already bestowed, but to encourage him to proceed in an experiment, which it is declared by the act, the legislature deemed "*uncertain,*" "*hazardous,*" and "*expensive.*" Mr. Livingston did proceed. He encountered all the hazard and uncertainty which was anticipated, and an expense equal to a fortune. His experiments have led to a success beyond his most sanguine expectations. And shall the promised reward now be denied ? It cannot be, so long as our legislators feel an interest in proving, that it is not true, as has been so often said, that republics are neither generous nor just.

If then it was not represented to the legislature,

in 1798, that the Chancellor was possessed of a mode of applying the steam engine to propelling boats on new principles, *which he had ascertained or knew would be advantageous:* If the act was not founded upon such representations, the charge that the suggestions contained in that act, were not true, or, in the technical language of the committee, were "not true in fact," is utterly baseless.

And here the discussion on this part of the subject might close, but I choose to pursue it farther, not because I believe it necessary to strengthen the argument which has led to the above conclusion; but because a further examination will give me an opportunity of noticing certain parts of your letter on which I wish to make some remarks. For the purpose of discussing this part of the subject, I will suppose that there was evidence that the act of 1798 was passed on the positive and absolute assertion of the Chancellor, that he was in possession of a mode of applying steam to navigation, on a new principle, and that he had ascertained the application would be advantageous.

I think it must be admitted, that the committee were not warranted in concluding that the Chancellor was not, in 1798, possessed of such a mode, from the circumstance that Fitch had made a successful attempt to execute his plan, and had already obtained a patent, unless it was proved to them that the mode which the Chancellor possessed, was similar to that which Fitch had applied, and for which he had taken his patent.

Suppose a person should contrive a boat, which, at one tenth of the expense the boats now require, could be navigated by steam with one fifth of the velocity, or at the rate of two miles an hour. Such a plan would be new; and it will hardly be denied that it might be advantageous. The conclusion, therefore, of the committee, that the Chancellor could not have been in 1798 the possessor of a new and advantageous mode of applying steam to boats, because Fitch had made a prior application of it, and had obtained a patent, is a most palpable non sequitur. The committee might with equal propriety have said, that neither the Chancellor, nor any other person, could in 1798, have had a new and advantageous mode of applying steam to navigation, because Jonathan Hull had, in the year 1736, constructed in England a *steam tow-boat.**

But to justify the report of the committee, you say, they had evidence before them that the Chancellor had no new and advantageous plan. You do not pretend that the committee, previously to their report, ever heard a single witness, or read a single affidavit, or any one document produced on the part of Messrs. Livingston and Fulton.

* It is remarkable that the first steam boat of which we have any account, was a *tow boat.* We have a description of this boat in a pamphlet published in England in 1737, by Jonathan Hull, under the title of "a description and draught of a new invented machine for carrying vessels or ships out of or into any harbour, port or river, against wind or tide in a calm."—This pamphlet I do not believe is to be had in this country, but it is mentioned in "a treatise on propelling vessels by steam," published in Scotland, by a Mr. Buchannan, in 1817, and which has been lately republished in New-York.

You heard counsel, it is true, as you say, but of that we shall speak hereafter. Yet you contend, that the committee had evidence before them which justified their report. Now, notwithstanding the boldness with which this assertion is made, I deceive myself very much if I do not shew, that this assertion "is not true in fact." I use these words in their technical sense, and I mean to shew it from your own book. What evidence does it appear from your statement the committee had before them, to prove that the representations recited in the act of 1798, were not true in fact? Simply the statutes of the state. Neither more nor less than this, the volumes of the laws of New-York, containing the several acts which had been passed subsequently to 1798, to extend and confirm the privileges granted by that act.

The statute book proves that the Chancellor's attempts to construct a boat, *which would go four miles an hour*, were fruitless.—It proves also, that new hopes to accomplish this object were succeeded by new disappointments. And I have admitted, in the biography of Fulton, that this was the case. But does this admit that he could not, in 1798, have possessed a new mode of applying the engine, or that his mode might not have been advantageous, although it was not capable of driving a boat with the speed that he had calculated it would, when he made his first application to the legislature?

In the biography of Fulton, I have said, that "Mr. Livingston, immediately after the passing "of this act, (i. e. the act of 1798,) built a boat "of about thirty tons burthen, which was propel- "led by steam; but as she was incompetent to "fulfil the conditions of the law, she was aban- "doned, and he, *for a time*, *relinquished* his pro- "ject." You have referred to this passage to shew, that I have admitted that the Chancellor had abandoned his plan. But you pervert its obvious meaning. It contains no such admission. It simply states the fact, that the particular boat, the Chancellor had attempted to construct, was abandoned, because he found she was unequal to the performance required by the law. But his project he did not abandon; he *relinquished it for a time.* Indeed, it was his firm conviction, that his plan was capable of being advantageously applied, and his determination not to abandon it, that brought forward the genius of Fulton, and stimulated him to those exertions to which mankind owe so much.

The statute book itself affords an instance of the insufficiency of its evidence to prove the fact upon which you rely. Mr. Fulton's experiments in France, in 1802, had determined that he was then possessed of a mode of applying steam to propel a boat on new and advantageous principles. In 1803, the act was passed giving to him and Chancellor Livingston an exclusive right, provi-

ded they employed within two years from the passing of the act, on the waters of this state, a boat whose progress should be equal to four miles an hour. The condition of this act was not fulfilled; and four years afterwards, that is, in 1807, another act was passed, allowing Messrs. Livingston and Fulton two years from that date to fulfil the conditions on which the right depended. Now, can any one doubt, that Mr. Fulton, in 1807, did possess a mode of propelling a boat, whose progress would satisfy the condition of the act? Yet if it had been referred to your committee to ascertain this fact, they might, upon the evidence of the statute book, and their own inferences, have reported, that he had abandoned his project, because he was incapable of fulfilling the condition.

But when the question is, what evidence the committee had before them to warrant their report, and not how the fact really was, it is curious that you should appeal to my admissions in the life of Fulton, which was not written until three years after the appearance of the report. And with equal consistency, you refer to the affidavit of Stoudinger, which you say, was, subsequently, produced. But let me ask, at what time subsequently? Not till after the committee had reported, and when Mr. Fulton was heard before the two houses on their report. The committee reported, that the steam boats "built by Livingston and Fulton, "were in substance the invention of John Fitch,

"patented to him in 1791"—"that the improve-
"ments and inventions of Daniel Dod were impor-
"tant and material," and that "Aaron Ogden
"built his boat on the principles invented by the
"said John Fitch, as improved by the said Dan-
"iel Dod."* I have averred, in the biography of Fulton, that the committee had no testimony before them as to the mode of propelling boats by steam, which the Chancellor possessed in 1798. And this, as I promised to do, I think I have proved, from your own book. You learned from the affidavit of Stoudinger, *after the committee had reported*, that the Chancellor had attempted to apply horizontal wheels. But when they made their report, I am convinced the committee did not know whether in 1798 the Chancellor had used chaplets, endless chains, duck's feet, or paddles, all of which he had tried previously to 1798, or whether he had attempted to propel his boat by vertical wheels. I feel the more confident that the committee had no such knowledge, because even now you do not pretend they had. You merely attempt to evade my allegation, by asserting that the statute book was sufficient evidence to warrant the report.

But I have also asserted, that the committee had no evidence before them to prove, that the boats built by Livingston and Fulton, were in substance the invention of Fitch; or to prove that Daniel Dod had made important and material improvements; or that Governor Ogden had built

* See Report, Appendix to Duer's Letter, p. 103.

his boat on principles invented by Fitch, improved by Dod. That on these points the committee had no testimony before them ; they asked for no testimony ; they were content with the representations of the petitioner, and refused the most earnest solicitations to delay their report till Mr. Fulton, who was then in New-York, might be sent for, and might he heard before the committee as Governor Ogden had been.

I think you would not have questioned any of these allegations, had not so much time elapsed since the transactions, which you acknowledge may have obliterated from your memory the fact, that the committee was applied to for time to send for Mr. Fulton.

I have not the least doubt, but that I can bring to the mind of every one who was an auditor when Mr. Emmet and myself appeared before the committee, a recollection of our then having, in the most earnest manner, solicited time to send for Mr. Fulton.

Mr. Emmet and myself happened to be in this city when Governor Ogden made his application to the legislature. I then had no other connection with Mr. Livingston and Mr. Fulton's steam boat concerns, than what arose from having been employed as their counsel in the suits of Van Ingen and others, which had previously been settled. But the committee chose to recognise me as representing the interest of Messrs. Livingston

and Fulton. On the 25th day of February, 1814, the petition of Governor Ogden was referred to the committee, and the next day, that is on the 26th, at about twelve o'clock in the day, I received a notice to attend the committee that same evening at six o'clock.

As Mr. Emmet had been engaged with me in the suits mentioned, I prevailed on him to attend the committee with me. In six hours after I received the notice, we were before the committee. There we found Governor Ogden, who opened the business with a speech, which no doubt was the result of many months preparation. We here learnt, for the first time, from the address of Governor Ogden, that it was intended to attack the grant to Messrs. Livingston and Fulton upon the ground that the suggestions of Chancellor Livingston, recited in the act of 1798, were not true, and upon the ground "that the steam boats built by Livings-"ton and Fulton were in substance the invention "of John Fitch, patented to him in 1791."

Governor Ogden also contended that Dod had made a new and important improvement. For the purpose of shewing the committee what Fitch's boat was; what Livingston and Fulton's boats were; and for establishing his position that they were in substance the invention of Fitch; and also to shew what was Dod's improvement, Governor Ogden brought with him a variety of pictures, and some very pretty little tin machines and

models. It would be very surprising to me if you should have forgotten for how long a time Governor Ogden engaged the attention of the legislature with an exhibition of these; because I thought you paid particular attention to this part of his performance. It appeared to me that you listened to his dissertation on parallel links and cranks, with great satisfaction, and seemed particularly pleased with the moving of his models. Governor Ogden occupied the floor of the assembly chamber before the committee, in speaking and examining witnesses, from six o'clock in the evening till between nine and ten. I then addressed your committee, relating to you under what circumstances Mr. Emmet and myself appeared before you. I told you that as to many of the points Governor Ogden had discussed, we had no knowledge whatever. That we knew nothing of Fitch's boat nor of the principles on which Mr. Livingston or Mr. Fulton's boats were constructed, and we were as little competent to discuss the merits of Dod's invention. That Mr. Fulton was deeply interested in the matter before the committee. That he was the only person capable of giving us that information which would enable us, as counsel of the grantees, to contend with Governor Ogden. That Mr. Fulton was in New-York, but would be immediately sent for, and might be in Albany in ten days. My whole address to the committee was to reason with them on this point. I urged to them that it could not be expect-

ed that after a few hours notice, and without having had any communication whatever with the persons for whom we appeared, we should be able to answer a speech of Governor Ogden, for which no doubt he had been preparing from the moment he contemplated the attack he was then making. I concluded what little I had to say with the most earnest entreaties that the committee would not make up their report until they should have heard Mr. Fulton as they had done Governor Ogden. The committee being indisposed to hear Mr. Emmet that night at the late hour which had arrived, there was an adjournment until the next evening, when Mr. Emmet addressed the committee. He did discuss many of the arguments which Governor Ogden had urged; but he professed, as I had done, his utter want of that information which would enable him to do justice to that part of the case which depended on mechanical science, on a knowledge of the construction of Fitch's boat, or of the boats of Livingston and Fulton. And he, as I had done, concluded with an earnest prayer that the committee would allow us time to send for Mr. Fulton.— And these are the only times when any person, either as witnesses, parties, or counsel, appeared, or were invited to appear before the committee on the part of Messrs. Livingston and Fulton.

And now permit me to present an extract from your letter as a specimen of the fairness, impartiality and candor with which it is written: "Bu

"if," say you, "a postponement were refused on "this or any other ground to whom was the re- "fusal given? to the counsel of Mr. Fulton, to "those whose presence was more important than "his own. To counsel, who had been retained "by him in every instance in which his rights "have been questioned in the courts of law; who "were possessed of all the facts, and were mas- "ters of his case; to yourself and Mr. Emmet, "who appeared and acted and were heard on his "behalf, *night after night*, before the committee; "a circumstance which certainly never could "have been suspected from your account of the "proceedings"!!

The committee, notwithstanding they had only heard counsel who had declared their utter inability to bring forward their clients' case, for want of information and instructions, on the 8th of March, reported, that in their opinion the steam boats built by Livingston and Fulton were in substance the invention of Fitch; that the improvements and inventions of Daniel Dod on the steam engine were important and material; that Governor Ogden had built his boat upon principles invented by Fitch, improved by Dod; and that it was not true in fact, that Chancellor Livingston, in 1798, was possessor of a mode of applying the steam engine on new and advantageous principles, because Fitch had before made a successful attempt to execute his plan of a steam boat, and obtained a patent therefor.

I have in my possession a document which will be corroborative of the facts I have stated in relation to the proceedings before the committee. Although it originated after the committee had reported, it relates to the previous proceedings. and as it was presented to the house of assembly, read and acted upon while you was in your place as a member, it would unquestionably have been noticed by you, if it had contained any misrepresentation. I refer to a petition in behalf of Messrs. Livingston and Fulton, presented on the 10th of March, 1814, to the assembly, and will now be found in its archives. It is as follows :

"To the honorable the house of assembly of the legislature of the state of New-York—The memorial of the subscribers, in behalf of themselves and others—Respectfully sheweth.

That a committee of your honorable body has reported a law, which is in effect a repeal of the laws which have heretofore been passed granting to the late Robert R. Livingston, Esq. and to Robert Fulton, an exclusive right to navigate the waters of this state by steam.

That the said law is founded on a report of the same committee, which suggests that the said laws making the grants to Robert R. Livingston and Robert Fulton, were obtained on false suggestions —That this is a fact which must depend on testimony. That your committee, although they have heard counsel, who appeared before them in favor of those who claimed under the grants to Living-

ston and Fulton, have not and could not have heard any testimony by the claimants on this very important point.

" That the person on whose petition the report of the committee has been made, came to the city of Albany, prepared to offer evidence on this subject. That the counsel who appeared in opposition to him, had not more than six hours notice of the hearing before the committee. That the most material evidence in relation to the false suggestions which are said to have been the foundation of the grants to Livingston and Fulton, must be in the possession of the said Robert Fulton, who resides in the city of New-York. That when counsel in behalf of the claimants under the grants of Fulton and Livingston appeared before your committee, they did it without any concert with Mr. Fulton, who is the surviving grantee, or with any one claiming an interest in the said grant. Time did not allow of any such communication ; and the counsel did not know, and had never understood till they heard the petitioner before the committee, that there was any pretence that the above mentioned laws had been obtained on false suggestions. It was impossible, therefore, that they could have been prepared to offer any evidence on that subject.

" Your memorialists have sent an express to the said Robert Fulton, and suppose that he will be in this city by the middle of next week. That if the

proposed law passes, it will be the entire ruin of the said Robert Fulton, and of many who have purchased rights from him under the laws of this state.

"Your memorialists therefore respectfully pray, that the consideration of the law proposed by your committee, may be postponed, to give a reasonable time for the arrival of the said Robert Fulton, and that then counsel may be heard at the bar of the house in behalf of those who claim under the existing exclusive grants."

I will endeavor to call toy our recollection a circumstance, which I think must remind you of the earnestness with which the committee were pressed to wait for Mr. Fulton; at the same time, it is a strong evidence of the necessity there was for his attendance. It may also be referred to as an evidence of that concealment and want of candor, in your references and quotations, of which you have so frequently and unreservedly accused me. You cannot forget the display Governor Ogden made before the committee of Charnock's work. You must remember that he called upon you to act conspicuously in this part of his exhibition—That he put Charnock's volume in your hands, while he read from what he professed was a copy of Mr. Fulton's patent. You found that Mr. Fulton had transcribed into his patent Charnock's calculations, nearly word for word, or rather figure for figure. I had long known that this was

the case, and could not perceive the object of all the parade on this subject, until I understood from Governor Ogden, in the sequel, that he meant to charge Mr. Fulton with these quotations as plagiarisms. I cannot forget the smile of satisfaction that seemed to play upon your countenance, when you thought Mr. Fulton was detected in so gross an imposition. It was that smile, more than any thing else, that excited my feelings beyond restraint; and I could not refrain from interrupting Governor Ogden, by assuring the committee, I knew that in the original patent (however it might be in the paper which Governor Ogden had exhibited as a copy) Mr. Fulton had referred to Charnock, as the source from which he had derived these calculations. That I might, as far as possible, do away the impression which I found the disingenuous course taken was about to make, not only on the committee but on a large auditory, I pledged my honor to the committee and to the audience, that I knew there was this acknowledgment in Mr. Fulton's original patent, as it was on file in the patent-office. Gov. Ogden neither admitted nor denied my allegation.—All he said was, that he found no such acknowledgment in the copy of the patent which he had in his hand. But when Mr. Fulton afterwards produced an exemplification of his patent to the house of assembly, it was found that my assertion was correct.

Suppose I had not known or recollected this circumstance, what an impression must have been made on the minds of the committee, and all who heard Governor Ogden? Impressions that would with difficulty have been eradicated by the irrefragable proof which Mr. Fulton himself afterwards produced.

Permit me in this place to make a remark, on the very candid manner in which you have italicised your word "*also*," in your note (p. 56) mentioning Charnock's work, and in the opinion you seem to wish to give your readers without expressing it. Let me also set you right as to those calculations, about which you certainly seem to have an imperfect memory. Charnock's calculations have no connection with "the requisite power of an engine in relation to the size and structure of a boat." They were only calculations as to the power acting from a *fixed* or *stationary point*, which would be requisite to move floating bodies of different shapes and dimensions, with given velocities, through the water. Taking these calculations for true, Mr. Fulton made them the basis of *another set of calculations*, entirely his own, as to the quantity of power *moving on and with* floating bodies of different shapes and dimensions, requisite to make them move through the water with given velocities.

These latter calculations, you will perceive, are the only ones "concerning the requisite power of

an engine in relation to the size and structure of the boat," and *it is not true in fact*, that they are to be found in Charnock's work, or in any Encyclopedia I ever heard of, or any where but in Mr. Fulton's patent, or among his papers. He set out Charnock's tables at length in his patent, in order to enable those who might wish to verify his own calculations to do so with facility, but he expressly stated from whence they were taken; and this is the whole matter relative to Charnock's tables, which was at first expressed, and has been latterly insinuated with so much good natured accuracy.—Now let me ask you, what did you mean by italicising the word *also*, in your note of reference to Charnock? Did you hope to be more successful than others had been in establishing a belief that Mr. Fulton had been guilty of the gross fraud imputed to him before your committee? If such was your intention, it is an instance of want of candor and fairness in respect to a man who is not now here to vindicate himself, and who has left no relatives but orphan infants to espouse his cause, "which I should have supposed unworthy of you, Sir."

I think I may now venture to appeal to any unbiassed judgment, and ask whether I was not warranted in saying as I have done, in the biography of Fulton, "That upon these points the committee "had no sort of testimony before them; they did "not ask for testimony;" and indeed, whether I

might not have gone further and said, that they would not hear testimony on the part of the grantees.

I cannot but take this occasion of exhibiting from your book, an amusing example of an attempt to supply facts and reasoning by big words and a bold manner.

The following is your lofty strain : " No testi- " mony ! had they not the statute book ? does " not the preamble of the act of 1798 recite in the " very words of a petition, presented on behalf of " Mr. Livingston and his associates, " that he had " not been able to comply with the conditions of " the act of the preceding session ?" " Did not " those conditions render it obligatory on him to " prove within one year, that the principles upon " which he proposed to construct his boat *were* " *advantageous*, by evidence of their successful op- " eration in practice ! Why did he in 1783 and in " 1787 successively obtain further time for the " exhibition of that proof ? and why to this day " has not a boat, upon the principles of which he " was possessed in the year 1798, been set in " motion, if those principles were such as to en- " title him to his monopoly ? was it pretended " that his plan was even practicable ? had it not " confessedly been abandoned ?"

" No testimony !" you exclaim. Yes, sir, I say no testimony ! I did say, and I now repeat, that the committee had no testimony which authorised

them to report, that the boats of Livingston and Fulton were in substance the invention of Fitch, or that the Chancellor was not in 1798 the possessor of a mode of applying the steam engine on new and advantageous principles. The Chancellor, till the day of his death, had a firm belief that his plan might be advantageously executed. He always imputed the failures in his attempts to reduce that mode to practice, to his want of experience in the operative part of mechanics, and to the impossibility of procuring, in this country, workmen to execute his designs with accuracy.—He might have been mistaken. His plan might not have been capable of producing the effects he so sanguinely anticipated. But the committee had no information by which to determine what were its merits.

After having enumerated the evidence exhibited to the committee, to prove what Fitch's boat was, and how she performed, you say* "these proofs were exhibited in my presence, notwithstanding I have declared that they (the committee) did not ask for testimony, and were content with the representations of the petitioner."

I never have said that you did not ask for testimony on these points. As to Governor Ogden's boat and Daniel Dod's improvements, God knows I never complained that you was not eager enough to hear testimony. But I did complain, and I do yet complain, that you would not wait till Mr.

* Duer's Letter, p. 62.

Fulton could be sent for; who, you was told, would be able to give you every information with respect to the Chancellor's boat—who if it were material, would be able to shew how far his plan differed from Fitch's, and how far the boats then established differed from all others that had previously been constructed; whose testimony would enable you to determine whether what Dod claimed as an invention had not been used before. Or if not, whether it was material or important. It was on these points the committee would not hear testimony. It was as to these points that I said the committee were content with the representations of the petitioner. And it is impossible that any one can read your book without being satisfied that on these points you had no other information. He was avowedly a party before you, seeking to promote his own individual interest, at the expense of those whose property he attacked.—You heard him; you heard all the witnesses he chose to call; you read every document he chose to present: Yet you refused the most earnest entreaties for a few days delay, that the persons whose rights he attacked, might have some of the advantages you had so cordially granted to him. Was this consonant to the maxim which enjoins a just judge to hear both sides?

There is nothing that appears to have touched your pride more, or to have given you greater offence, than the allegation that the committee were

ignorant of the subject on which they affected to give the house information. I regret if the language here used is not as delicate as might have been selected to express the idea. Had I been master of your pretty style I might have covered the sentiment with a verbiage that would have rendered it less shocking. And if I could now repeat the assertion, in words less offensive, you may be assured I would adopt them. I can only say that your book has convinced me I was perfectly right, in supposing that the committee did not understand a very material part of "the "very interesting subject on which they made "their long and elaborate report." You there state that the steam boats built by Livingston and Fulton, were in substance the invention of John Fitch, patented to him in 1791.

You report, that Daniel Dod had made important and material improvements on the steam engine.

You report, that Aaron Ogden built his boat on the principles invented by Fitch, improved by Dod. Now I must be permitted to say, and I wish to do it as delicately as possible, that these assertions do betray an entire want of information on the subject, to which they relate. I know but little of mechanics; but yet I do believe the very little I do know will enable me, with the assistance of your book, to prove that the committee knew no-

thing of the mechanism as to which they have expressed these unhesitating opinions.

As to Livingston and Fulton's boats being in substance the invention of Fitch, what do you mean by "*in substance?*" How were they in substance built on the invention of Fitch? You have given us in your appendix, a drawing or plate of Fitch's boat, as he constructed it in 1786, which it appears was propelled by a horizontal cylinder, moving six paddles on each side. In your letter you say, that in Fitch's boat the cranks were applied to paddles suspended perpendicularly from an elevated frame and acting by an eliptical motion upon the water. Is it possible that the present boats, with their upright cylinders, their condenser, air pump and other parts of the machinery brought into such a position as to give room in the boat, their balance wheels, their vertical bucket wheels, their wheel guards, and wheel covers, are the same in *substance* with the boats of Mr. Fitch, which you have described, and which was propelled by paddles moved by a horizontal cylinder? If it be so, then all steam boats are, "*in substance the same.*" And if plans differing so widely as Fulton's from Fitch's be in *substance* the same, then why was not Fitch's the same in substance with the *steam-tow-boat* projected by Jonathan Hull, in 1737, that is nearly eighty years ago—with the Abbe Arnal's steam-ship made in France, in 1781—with the Marquis Juffroy's, in 1782; all

which were prior to Fitch's—and with Lord Stanhope's, Rumsey's and others, who were making efforts and experiments nearly cotemporaneously with him? If there were this identity in the plan of Mr. Fitch's boat and Mr. Fulton's boats, then wheels and paddles are *in substance* the same.—Yet it is not difficult to point out, at least one, substantial difference between them. The paddle must move with much more than twice the velocity of the boat, because half its motion is lost in recovering its position after it has made the stroke;—whereas if the bucket of the wheel be justly proportioned so as not to drive the water, the progress of the boat will be exactly equal to the motion of that part of the wheel which moves on the surface of the water. But neither the paddle or bucket can be made so as that the water will afford an immovable fulcrum. In this respect the wheel and paddle lose equally, both therefore must go faster than the boat, but the loss of the retrograde motion is peculiar to the paddle. The paddle to drive the boat twelve miles an hour, must consequently move more than twenty-four miles an hour. Mr. Fulton tried experiments with paddles, and the result was an opinion, that wheels were greatly preferable to them: and that if a boat could be propelled by paddles at the same rate that it might be by wheels, the great velocity with which the machinery must move, and the consequent friction, would render it very liable to

be disordered and prevent its being durable. In the biography of Fulton,* I have referred to a document which shews that Mr. Fulton had these views. And that such is the difference must be obvious to every one, though he be without any mechanical knowledge, who will give the subject any consideration. I must therefore repeat, that when the committee reported that the boat of Fitch and the boats of Livingston and Fulton were the same in substance, they did not understand the subject about which they affected to give information. The best application of paddles that ever was made, might have been seen in the little boat called the Stoudinger, that plied between this city and Troy last summer. But I believe no one who has witnessed her performance, can doubt that paddles are inferior to wheels: Though for a small boat, which will not admit a wheel of large dimensions, paddles, applied according to the very ingenious invention of Mr. Allair, may be preferable. Perhaps you would say, these are in substance the invention of Fitch. Let any one, however, compare Allair's boat with the representation of Fitch's which you have given in your appendix, and if he has the least knowledge of mechanics he will readily perceive the difference.

But the committee reported that Governor Ogden built his boat on principles invented by Fitch improved by Dod. Now, sir, suffer me to tell you some facts in relation to this business, which

* Life of Fulton, p. 153.

were not known to the committee when they made their report, because they asked for no other information in relation to Governor Ogden's boat than he chose to give them. Governor Ogden, with a design to avoid any question under Fulton's patent, built his boat upon such a plan that she was to go without the bucket wheels at her side. without wheel guards, or wheel covers ; all of which are the patented inventions of Fulton. Governor Ogden found that in this plan his vessel would not perform as he expected and desired.— He altered her ; took precisely the bucket wheel, wheel guards, and wheel covers of Fulton.

The first plan he attempted to execute was to drive his boat, the Sea Horse, by a wheel in her stern, for which she was fitted by two stern posts and a hollow counter. And she may at this moment be seen, at her dock in the city of New-York, with these marks of an abortive birth. This was the boat built by Governor Ogden, and she may have been built " upon principles invented by the " said John Fitch as improved by the said Dan- " iel Dod," and then she was good for nothing. But when she got Mr. Fulton's bucket wheels at her side, his wheel guards and wheel covers, then she was, *in substance*, the invention of Fulton, notwithstanding she had what Daniel Dod claimed as his inventions and improvements, which the committee reported were so important and material, and which they undertook to say positively, but

so far as I recollect without any other evidence than Governor Ogden's assertion, Dod made without ever having seen Mr. Fulton's patent or specification, although they do not venture to affirm that he had never seen Mr. Fulton's boat, which had then been running more than three years.—If the committee had possessed this knowledge, would they not have reported that Governor Ogden's boat was built on principles invented by Fulton, rather than according to an invention of Fitch? I think I shall not now be censured for saying the committee were not informed on this part of their subject.

As to the improvement of Daniel Dod I think you give up the cranks for which he obtained a patent. You must have seen that as to these it was too desperate to attempt to support him in his pretensions; because every body must have told you that cranks were the very first means applied to convert the libratory motion of an engine beam into a rotary motion. Of course, that this invention was much older than Mr. Dod. And as to what I have called, and what Governor Ogden called, a parallel link, it is precisely as you have described it, "a simple and easy mode of "giving a perfect rectilineal motion to the piston-"rod, although it be attached to the end of the "beam which moves in a curve." But all this very ingenious and very accurate description will not alter the nature of the thing. It is, after all,

neither more nor less than a parallel link, and such a parallel link as had been applied by Bolton and Watt to different parts of their engines, many years before Mr. Dod could have thought of an engine. It was this which induced me to express my surprise that you should have given Dod credit for this invention as for a material and important improvement, when I knew it was impossible that you could have applied to any impartial person acquainted with the subject, who would not have told you it was no improvement at all; because it had been used a great length of time previously to Dod's having pretended to the invention.

There is another part of the report connected with this subject, which I shall briefly notice.—It is there stated, that in 1810, Gov. Ogden applied to Mr. Dod to make him an engine of sufficient power to drive a boat of a proper size from Elizabethtown to New-York; that Dod did thereupon, without ever having seen Mr. Fulton's patent "*or specification*," make a small steam engine, and inventcd some improvements for which he obtained a patent. Now, I have noticed in the life of Fulton, that though the committee say Dod had not seen Mr. Fulton's patent, they do not say he had not seen his boats. They could not indeed, because it was known that Mr. Dod lived within a few miles of New-York, and had an opportunity of seeing Mr. Fulton's boats every day. But

on what evidence, and why, did the committee say that Dod had not seen Mr. Fulton's patent or specification ? However it may now be explained, it cannot be doubted but it was intended to raise an inference that Dod was not indebted to Fulton's patent or specification for his improvements. It is a singular idea that he might have been suspected of plagiarism if he had seen the patent or specification, but that there would be no ground for such suspicion, if he had seen the boats themselves of which the patent or specification is only a description. You say that this reference to the patent or specification was only to exclude the idea that Dod might have had reference to Fulton's calculations. But what connection, " I beseech you," had Dod's improvement on a steam engine, his parallel link, with calculations of resistances ? If Dod did see and examine Mr. Fulton's boats, he must have seen the parallel link applied in several instances. Where was the propriety, therefore, of noticing that Dod had not seen Fulton's patent or specification, and omitting to notice that he had seen his boats? Or, how does it justify this omission, now to speak of Mr. Fulton's calculations ? I sincerely believe, sir, that these calculations are pressed into your service, merely to give you an opportunity, of which you have so *very candidly* availed yourself, of making your reference to Charnock. But whatever might have been the intention of the committee, the manner

in which they attempted to augment the merits of Mr. Dod, was calculated to mislead, and therefore I could not let it escape unnoticed.

I have yet to examine your position, or rather the position which you say Governor Ogden has supported by such conclusive reasoning, that if the law of 1798 in favor of Mr. Livingston, was passed on unfounded suggestions, then the subsequent laws or any of them may, consistently with the faith, honor and justice of the state be repealed.

So far as respects this case, I may concede, although it is not true in fact, that the legislature which passed the first act understood that the Chancellor was in possession of a new mode of propelling boats by steam, which experiment had satisfied him would be advantageous.

You admit that Chancellor Livingston at the time he applied for his grant, might have had the "most perfect good faith in the representations "upon which it was obtained."* You declare you "never doubted Mr. Livingston's full belief in the "efficacy of his favorite plan." "Independently," you say, "of your perfect confidence in his asser- "tion of the fact, *the large sums of money which* "*he was known to have expended* in his repeated "essays to reduce that scheme to practice, afford- "ed to your mind the strongest evidence of his sin- "cerity."

* Duer's Letter, p. 58.

I cannot but rejoice that any circumstances should have drawn from you this tribute to the memory of Chancellor Livingston. But it is at a late day indeed, that you render this justice to his character. I will not say that you have never spoken of him with respect: but I can say with the most perfect confidence, that in none of the discussions on this subject in which you have taken a part, when I was present, did I ever hear you utter a syllable that marked any "reliance on his truth and honor,"* or any respect for his talents. I never heard you say a word that intimated the willingness you now express to admit 'that Mr. Fulton and the late Chancellor Livingston, by their "successful introduction of steam boats on the "waters of this state, were entitled to its gratitude "and bounty." But on the contrary, it did appear that on these occasions you manifested an hostility to Chancellor Livingston and all who were connected with him, which it seemed to me must have had its foundation in some deep-rooted prejudice, or some "resentments" which one would imagine are even yet "unsubdued."† You cannot refrain from manifesting your dissatisfaction at the respectful mention I have made of the Chancellor's brother-in-law, General Lewis. And you have assailed Doctor Mitchell, with anger and an attempt at irony, for no other reason that I can perceive than his having advocated the Chancel-

* Duer's Letter, p. 59. † Ibid. p. 56.

lor's first application to the legislature for an exclusive grant.

If it did appear to the committee that Chancellor Livingston was deserving of the commendations you now bestow upon him—If it did appear to them that previously to 1798 he had been "meri-" toriously expending large sums of money in "repeated essays to reduce his scheme to prac-" tice," was it not to be expected that the committee, in their report, would have given him some credit for such laudable liberality and enterprise? When they were setting forth the claims which Governor Ogden had to the "justice and magnanimity of the state," as the owner of an old and long established ferry—as the assignee of Fitch's rights, dearly purchased for the price of ten dollars from a spurious administrator—as the builder of a boat on the principles of Fitch, improved by Dod. When they speak, with just commendation of the labor and perseverance of John Fitch—when they are so ready to give Daniel Dod credit for material and important improvements, for his cranks and parallel links, was it not to be expected that the committee would have said something, intimating their reliance on the truth and honor of the Chancellor; something indicating their approbation of the repeated essays he had made to reduce his system to practice; something declaring the respect due to "the inventive genius," "energy," "perseverance," and "public spirit of Mr.

Fulton?" and while to excite the sympathy of the legislature, they represented that Governor Ogden's boat was built to preserve to his ferry its ancient and accustomed proportion of business, would not the appearance of impartiality have been better preserved, had they also represented that Mr. Fulton had exhausted the best part of his life in pursuit of his steam boat inventions; that his whole fortune was embarked in the boats which he had built under the sanction of the laws of the state, and that "their repeal would rob his children of the only patrimony he had to leave them." But how different is the conduct of the committee? They dismiss all consideration of the claims and merits of Chancellor Livingston and Mr. Fulton, by stating their opinion, that the suggestions contained in the act of 1798 were not true in fact, and that the steam boats built by Livingston and Fulton, are in substance the invention of Fitch* ! !

These were the considerations which induced me in the biography of Fulton to remark, that it "could not but be observed, with what partiality "the committee contrasted the merits of Dod "and Fitch with those of Livingston and Fulton. "Mr. Dod, for his parallel links and cranks (both "of which are nearly as old as the first application "of steam engines to produce a rotary motion) is "held up as a most meritorious inventor; and his

* Appendix to Duer's Letter, p. 103, 104.

"boat, which he," (and I might have added his "wealthy associates) "could not make sufficient-"ly perfect to answer any useful purpose, is pre-"ferred to those of Mr. Livingston and Mr. Ful-"ton, who, it cannot be disputed, were the first to "give the world a benefit from the application of "steam to navigation."*

This passage does seem to have disturbed your "unruffled spirit."† In your comments, after expressions more indecorous than I shall permit myself to apply to you, you exclaim, "Wherein, let "me ask, sir, do the committee oppose to each "other the respective merits of Fitch and Dod and "Livingston and Fulton? Demonstrate it, I be-"seech you."‡ I have demonstrated it. Read over the "long and elaborate report,"‖ for which you give yourself, or the committee, so much credit, and these comments upon it; and you will see that I have given the demonstration you demand. If you do not see it, "I feel confident that "every undeluded, candid man will judge,"§ that "you must be blinded by prejudice."**

But you now say, that Mr. Livingston was mistaken or misinformed as to his being in 1798 the possessor of a new and advantageous mode of propelling a boat by steam. I will admit, as I have said, for the purpose of argument, that it may be so. And with this admission let us consider whether Chancellor Livingston had not, and

* Biography of Fulton, p. 241. † Duer's Letter, p. 50. ‡ Ibid. p. 52.
‖ Duer's Letter, p. 51. § Ibid. p. 63. ** Ibid. p. 52.

whether those who now claim under him and Mr. Fulton have not, a just claim on the magnanimity of the state in consequence of the acts that have been subsequently passed; and whether a powerful appeal may not now be made in their behalf, to the faith, honor and justice of the legislature? You seem to think that the rights of Messrs. Livingston and Fulton, rested entirely on the act of 1798. If that act was passed in consequence of mistake or misrepresentation, then it seems to be your opinion, that there can be no just claim under the subsequent acts. All the acts, you say, are "*pari materia*," and, "according to the rules of law, must be construed together;"* and that therefore no new title was conferred by the subsequent acts.

Assuming then that the suggestions on which the act of 1798 was passed were not true in fact, let us see how the claims of the grantees, or their representatives, ought to be affected by that circumstance. Previously to 1799, Mr. Livingston had interested Mr. Nicholas I. Rosevelt and others in his enterprize. The legislature, on the 29th March in that year, passed an act, upon a petition presented by Mr. Rosevelt, in behalf of himself, Mr. Livingston and their associates. The petition, as appears by the recital in the law itself, represented, that in virtue of the act passed the preceding year in favor of Mr. Livingston, he and the associates "had expended a very considerable

* Duer's Letter, p. 69.

sum of money in endeavouring to effect the object of the said act," but that from various unavoidable accidents, he and his associates had not been able to comply with the conditions therein mentioned ; *though he had reason to hope*, that the same might be effected, if sufficient time was afforded ; and praying, that in consideration of the great expense and extreme utility of the object, no advantage might be taken of their non-compliance with the conditions in the said law contained ; but that it might be continued in force for twenty years from the first day of June then next : provided the conditions contained in the act passed in favor of Mr. Livingston in 1798, should be fulfilled in two years from the 20th June, 1799.

Now it must be admitted, that when the legislature passed this last mentioned law, they knew that Mr. Livingston did not profess to be the possessor of a mode of applying steam to navigation, which he had determined would propel a boat at the rate of four miles an hour. It must be admitted, that when this act of 1799 was passed, the legislature, well understood that Mr. Livingston so far from having ascertained that his plan would succeed, had only a hope that he might effect his object in two years, if allowed that time for experiment. With this precise information, as to what had been the success of Chancellor Livingston's efforts, what answer is given to the petition ? Why, as is said in the law

itself, that it appeared to the legislature to be just and reasonable: and Chancellor Livingston, having agreed that such a law as was prayed for should pass, it was enacted that the law of 1798 should be continued in force for two years. Can it be pretended that this law was passed on suggestions, as to Chancellor Livingston's being the possessor of a mode of applying steam to propel boats, which were not true in fact? It might however be pretended, with as much propriety as it has been said that the act of 1798 was founded on such suggestions.

But suppose the legislature in 1798, really understood that the Chancellor meant to represent himself possessed of a mode of applying the steam engine on new and advantageous principles, or rather of so applying it that it would drive a boat at the rate of four miles an hour; when they passed this law of 1799, they knew he was mistaken, and that he was not the possessor of such a mode. We may then suppose the legislature, by this act of 1799, and by the reference in it to the act of 1798, to say, we understood you as representing in 1798 that you was possessor of a mode of applying a steam engine to propel a boat, at the rate of four miles an hour. We now find that we misunderstood you, or that you was mistaken; and that you was only in a course of experiments, which you believed would produce the result you desired; and we find even

now, you have only hopes that it may be effected: Notwithstanding this, we think it unreasonable, in consideration of your laudable enterprise and exertions, to take advantage of your not having complied with the conditions of the former act: And as a further inducement for you to proceed in your "uncertain, hazardous and very expensive experiments," which if successful promise important advantages to the state, we will grant you two years more for the execution of your project; and if you succeed, you shall enjoy, as a remuneration for your expenses, and as a reward for the benefit which the state will derive from the exercise of your ingenuity and perseverance, an exclusive right to navigate the waters of this state by steam for twenty years. But it may however be said, there is nothing of all this in the act of 1799; that it merely refers to the act of 1798, and continues it in force. But what "candid, undeluded and impartial man," will say that this act of 1799 is not to be understood precisely as if the legislature had incorporated into it all the enacting clauses of the act of 1798, instead of having, for the sake of brevity and convenience, satisfied themselves by a reference to that act? If the clauses of the act of 1798 had been transcribed into the act of 1799, it could not have been, as indeed it cannot now be, understood otherwise than as having been passed to induce Mr. Livingston to persevere in those efforts, as to the success of which he expressed such sanguine hopes.

These hopes, however, were fallacious. Either owing to other unavoidable accidents, or possibly because Mr. Livingston's plan was not equal to his expectation, the conditions of the act of 1799 were not complied with; and he relinquished his project, till, in 1802, when (as has been mentioned) he met Mr. Fulton in France. In 1803 they put in motion their steam boat on the Seine. The Chancellor communicated to his friends in this country, his increased confidence of success, which the experiments previously prosecuted in France had produced; and desired that an application might be made to the legislature, for an exclusive grant to him and Mr. Fulton. Upon this application the act of April, 1803, was passed, giving to Robert R. Livingston and Robert Fulton, for twenty years, "the rights, privileges and advantages" "which had been granted to Robert R. Livingston," by the act of 1798. At the time the legislature passed this act, they knew upon what the Chancellor's and Mr. Fulton's hopes of success then rested. They were informed of what Mr. Fulton had been doing in France, by the friends of Chancellor Livingston, who brought forward and advocated his application in the house. Now, even if the representations of Chancellor Livingston, which induced the legislature to pass the act of 1798, were such as you assert them to be, and that he was, as you admit he may have been, mistaken; is there any pretence that

the suggestions or representations, which induced the legislature to pass the act of 1803, were not true in fact? Or supposing that the representatives of Chancellor Livingston may justly be deprived of the rights which were granted to him, because he, from "mistake or misinformation," made wrong representations to the legislature in 1798, are the representatives of Mr. Fulton to be involved in the consequences of the Chancellor's error?

This act, you say, conveyed no new title, "because it results conclusively from the reasoning "of Mr. Ogden, which" you "had recapitulated, "that the act of March, 1798, is the foundation of "the exclusive title at present possessed by the "representatives of Messrs. Livingston and Ful-"ton."* And what is this conclusive reasoning of Mr. Ogden? It will be found in the 24th page of your letter, and is stated as having been applied to the act hereafter to be mentioned. It is, in a word, that neither of the acts, subsequent to the act of 1798, "did *per se*, give any title, but merely pro-"longed the grant or contract to Messrs. Livings-"ton and Fulton." I should have been not a little surprised, though you had done no more than cite the argument with terms of approbation, but when you adopt it, and refer to it as affording "conclusive reasoning," I cannot but think it is an extraordinary instance to shew, how far passion and pre-

* Duer's Letter, p. 67.

judice can pervert the human understanding. It is that kind of argument which might have an influence, if urged by some ingenious and zealous advocate in a justice's court; but when addressed to the legislature, it was an insult to their understanding. It cannot be doubted but that the legislature, which passed the acts subsequent to the act of 1798 and referred to that act as to the rights and privileges which it was designed to grant, intended that the subsequent acts should have precisely the same operation as if they had not adopted this brief method of legislating, and as if the enacting clauses of the act of 1798 had been copied into the subsequent acts. I have sufficient confidence in your honor, integrity, and common sense, to be willing to put the question to yourself, and ask you, whether you do not believe that such was the intention of the legislature? This attempt, therefore, to blind the understanding, and to mislead the judgment of men, by an affectation of law learning, by a reference to technical rules, and by a quotation of some words from the jargon of our profession, I am sure will be in vain. You are told that the legislature did mean to convey a new title by the acts subsequent to the act of 1798. Your answer is, in effect, that may be very true—that cannot be disputed—but it is no matter what they meant; we must not now understand them according to their meaning, or give effect to their intention, because neither of the acts,

subsequent to 1798, " *per se*," gives a title : they only prolong the previous grant, because all these acts are in *pari materia*." And when the legislature is called upon to exercise its " magnanimity," it is told, at the same time, not to decide according to the common understanding of men as to what is consistent with faith, honor and justice, but to be governed by some certain technical rules of law.

I dare say Judge Yates very much regrets your disapprobation of the opinion he gave in the cause of Livingston against Van Ingen, " that the same " privilege granted to Chancellor Livingston by " the act of 1798 was granted in April 1803 to " Messrs. Livingston and Fulton.* But I must observe to you, that Chancellor Kent has also the misfortune to differ from you on this point. You will find that in his opinion, delivered in the same cause, he uses these words : " There are in the " whole, five different statutes, passed in the years " 1798, 1803, 1807, 1808 and 1811, all relating to " one subject, and all granting or confirming to " the applicants, or one of them, the exclusive " privilege of using steam boats upon the navi- " gable waters of this state."

It is remarkable that there was an unanimous opinion of the Judges of the Supreme Court, and of the members of the Senate, for giving effect to these laws ; and I do not believe there was one

* 9 Johnson's Reports, page 559.

single member of that body who did not also differ from you upon this point.

The first steam boat, that ever succeeded in a profitable way, was constructed in 1807 by Mr. Fulton, and put in operation as a packet between New-York and Albany ; but the time for complying with the condition of the act of 1803, having previously expired, upon application to the legislature for that purpose, in behalf of Messrs. Livingston and Fulton, an act was passed on the fifth of April, 1807, by which the time to exhibit the proof required by the act of 1803, was extended for the term of two years.

It seems hardly necessary to go farther into an examination of the title of Messrs. Livingston and Fulton, because it is admitted, that if the act of 1803 did grant to them an exclusive right, upon the fulfilment of the condition, then the title of Messrs. Livingston and Fulton's representatives cannot be questioned, on the ground of any of the prior acts having been unadvisedly passed. I shall, therefore, briefly notice the first clause of the act of April, 1808, as that is the only one which particularly relates to title ; the rest more especially relate to the security or enjoyment of the title. It must be remembered that the first boat had run through the summer of 1807. She had frequently been at this city, and probably most of the members knew exactly what she was, and the history of those events which had led to an

establishment so honorable and advantageous to the state. They then passed a law, declaring that Messrs. Livingston and Fulton should be entitled to five years prolongation of *the grant or contract* with the state for each boat, in addition to that then in operation, which they should establish: Provided, says the act, "that the whole term of their exclusive privileges shall not exceed thirty years." Is not this act a recognition of the right of Messrs. Fulton and Livingston? Is it not a grant to them? No, we are answered, with much solemnity, it is not; because it does not *per se* give the right, and because this and the act of 1798 are in *pari materia*. You must go back to that time to inquire, whether that act passed in favor of Mr. Livingston, was not passed in consequence of some mistake or misinformation of his; and if it were, then the act of 1808, passed in favor of Messrs. Livingston and Fulton, in which Mr. Fulton has as deep an interest as Mr. Livingston, must be considered as invalid. I certainly shall not think it worth while to repeat the answers that have so often been given to this miserable sophistry. But in as much as you rely so implicitly on these conclusive arguments of Gov. Ogden, I do think you should have been the last to avow that scholastic distinctions are sometimes opposed to reason and common sense.*

I have now noticed, I believe, the most material objections to the exclusive right of Livingston and

* Duer's Letter, p. 45.

Fulton, independent of the constitution of the United States. And the course I have pursued has enabled me to answer some of the passages in the life of Fulton, which have given you the most offence.

I shall proceed to examine the constitutional question. And here I admit, is a field for all the law learning you possess. But unfortunately, at the very moment when there is an occasion for the display of your professional skill, it seems to have forsaken you, and your reliance appears to be entirely on the resources of your own mind. You disdain to acknowledge any adventitious aid, and would have it understood, that by mere force of your own ingenuity, you mean to put down the Judges of the Supreme Court and of the Court of Errors. Here the inquiry is not as it hitherto has been, what the state might do "consistently with faith, honor and justice," but what they had power to do. If the law of 1798 were against the constitution of the United States —If the state had no power to pass that law, I admit that it was void : and I admit that this or any legislature have the power to declare it so. But after five legislatures and five Councils of Revision have sanctioned the constitutionality of the laws making the exclusive grant ; after the Judges of the Supreme Court have given their judgment in favor of the validity of the laws ; and after the Court of Errors, the highest tribunal in the state, has unanimously rendered the same judgment.

may I not ask, if it would be discreet in the legislature now to decide, that the exclusive grant is unconstitutional? I am aware you will insist on an exception as to the Council of Revision. You have remarked, that the Council of 1798 did object to the first law; and from the manner of your remark it would be believed, that the objection was to the *constitutionality* of the law in reference to the constitution of the United States. It is true you have inserted in your appendix, where, however, it was not likely to be generally read, a copy of the minutes of the Council. And it appears from them, that the only objection the Council had to the first act in favor of Robert R. Livingston, was that it did not appear that the facts from which the forfeiture of the grant to Fitch was stated to have arisen, "had been found in some due course of law." But neither the Council of 1798, nor any other Council, ever objected to the law in favor of Chancellor Livingston, as transcending the limits which the constitution of the United States imposed on the sovereignties of the states. The objection, that the forfeiture of Fitch's grant had not been found by due course of law, respected only the rights of Fitch and his representatives. And if they have not complained, no other person has a right to do so. Let me remark to you, that the minutes of the Council, of which you have given a copy, are signed by John Jay. He who had as great a share as any other man in forming the

constitution, which is the bond of our national union. He who had devoted all the faculties of his great mind to a consideration of the limits which were assigned to the different powers that would be in exercise under that novel form of government. He whose wisdom had recommended him to the choice of a free people, as their representative in a council which was to form a charter of their liberties. He, who had held the highest judicial office ever conferred on man, the chief judge of a great republic. Such a man, at a time when jealousies were most alive as to the respective powers of the state and general governments, had no objection to the passing of the law in favor of Chancellor Livingston, on any suggestion that it could interfere with the national constitution. Governor Jay, as you have justly said of Gen. Hamilton, "had certainly the best means of ascertaining the intentions of the "convention." The same remark is applicable to the other venerable men whose names you have given as members of the Council of Revision when the act of 1798 was passed. They were the then Chief Justice (the late Chancellor Lansing) Judge Lewis and Judge Benson. The name of Chancellor Lansing deserves to be particularly noticed, because he had been but a few years previously to the passing of the act of 1798, a member of the state convention which adopted the federal constitution, and took a conspicuous part in the deliber-

ations of that body. He certainly would not have suffered this law to pass the Council without objections from him on constitutional grounds, if he had not understood that it was an exercise by this state of one of those powers, (to use the language of the 12th article of the amendments to the constitution) "not delegated to the United States," but which are "reserved to the states respectively or to the people."

I would also direct your attention particularly to the name of Judge Lewis; but as he is a connection of the Livingston family, and has been guilty of the sin of supporting the steam boat rights, I might again expose him to that disrespect, irony, and sarcasm, with which I think every one must have regretted to see a young man attempt to treat one of Governor Lewis's age, station, and character.

I find the task I have to perform a much longer one than I expected it would be. And you have left me but little time for its execution. I might, from what has been written on this constitutional question, compile what would in itself be a volume. But as I presume that no man who may be called on to give a decision on a question so important not only to individuals but to the public, will make up his mind without reading attentively the opinions of the Judges in the case of Livingston against Van Ingen, in ninth Johnson's reports, I shall be much more brief than I should think it right

to be were it not in my power to make this reference. I think it will be found by those who will peruse the case attentively, that among all the mistakes you have made none is more conspicuous than your misunderstanding not only the arguments of the Judges but the points they have decided.

The discussion of this constitutional question occupies sixteen pages of your book, and independently of your speculation on the fruits of intellectual labor which I have noticed, all you have said amounts to this simple proposition: That there is no difference between securing to an inventor the exclusive right to his inventions or discoveries, and securing to him a right to use or employ them at his pleasure.

The constitution of the United States gives Congress power to secure to authors and inventors the exclusive right to their respective writings and discoveries. This you contend is the same as if the constitution had authorized Congress to secure to authors and inventors a right to publish every where, and employ the books they may write or the things they may invent. Your whole argument rests upon the correctness of your position, that the delegation of power to Congress, as it stands in the constitution, authorizing them to secure to inventors a title to their inventions, is the same as if Congress could secure to them in each state against the will of that state, the use of their inventions. If this, which is the only basis of all you have said, be taken from you, the

fanciful superstructure you have raised upon it falls to the ground. Though you have heard the obvious distinction between the two powers so often asserted, yet afraid, as it seems, to attempt to support your own position, you endeavor to evade the necessity of all argument on the subject, by saying—"It may be a very good scholastic distinc- "tion, but it is very contradictory to reason and "common sense, to say that a man's right of prop- "erty is not invaded when his use or enjoyment "of it are intercepted or prohibited." You certainly had too much reliance on your own weight, when you calculated that these expressions would pass for an answer to what you have so often heard forcibly urged upon this point. But I shall endeavour to shew, that the distinction which you think merely scholastic, is a substantial one ; and that it is neither a violation of reason or common sense to assert, that the use or enjoyment of property in particular places may be intercepted or prohibited, and yet the right of property be perfectly secure. It seems to me it must be admitted, that if a person has secured to him the sole and exclusive right to a thing, so that no one can have any legal claim to the possession of it, so that no other person can touch, much less injure or use it without his consent, that then he has a right to the thing. There certainly must be an exclusive right of property, when all but one are excluded from the possession or use of the thing to which the right extends. Is not

then the right to property very different from, and indeed entirely independent of, the use or the right to use? I think a few cases may illustrate this distinction, and render it very obvious. I recollect that some short time before Governor Ogden exhibited his models of parallel links and cranks to the committee, of which you were chairman, a show-man brought a lion to this city. The common council, not liking the appearance of the monarch of the forest, or fearing that he might do some mischief in this populous city, banished him; or in other words, intercepted or prohibited to the shew-man the use and enjoyment of his lion within their jurisdiction. It never was considered that the corporation, by this municipal regulation, invaded the rights of property of the lion master; on the contrary his *exclusive* right to the animal was as perfectly secured to him as it was before the corporation interfered with the use of his property. In New-York, the corporation have passed a law, that no man shall ride or drive a horse turning the corner of a street off of a walk, and yet I never thought that this regulation rendered me less the owner of my horse. So they have lately passed a law, prohibiting swine from running in the streets. I believe it was since the publication of your pamphlet, but of this I am not sure. The hog-masters took up your idea, but I do not recollect that they acknowledged themselves indebted to you for it. They however insisted, as you have

done, that the distinction between a right of property and a right to do with it as the owner pleased, was entirely scholastic ; and the corporation could not " prohibit" their hogs from running in the street, or " intercept" the animals if they were doing so, without invading that right of property secured by the general laws of the country. The common council, however, thought the distinction between leaving to the owners of the hogs their full right of property and permitting them to use and enjoy it as they pleased, not entirely scholastic ; but, that on the contrary it was palpable and obvious to the most obtuse understanding. The remonstrance of the hog-masters, although it was drawn up with a good deal of ingenuity, and was remarkable for a sort of diplomatic style and loftiness, had no manner of effect. Every one saw that it must have been written under the influence of interest, or of strong passions, or prejudices ; and finally, as far as I recollect, the hog-masters had leave to withdraw their remonstrance.

I dare say, that notwithstanding their abstract positions, the owners still felt themselves perfectly secure in exercising their right of property, for I have no doubt but they killed and eat their hogs. These cases, however, are not such apt illustrations of the distinction which I am endeavouring to point out, as some others that may be stated. We have in our statute books several acts granting exclusive rights to drive stages and carry passen-

gers on certain roads, and heavy penalties are denounced on all who shall infringe these laws.—Suppose you were the possessor or owner of any kind of vehicle, whether patented or not, in which you was disposed to carry passengers for hire on the road to which the exclusive right extended. The exclusive grantees would "prohibit" you from doing so, and "intercept" you if you made the attempt. But you would, nevertheless, be the owner of the vehicle. The right of property, though you was restrained in the use of it, would nevertheless be fully secured to you. There is an exclusive right of ferry from the city of New-York to Weehock, which is six or eight miles up the Hudson on the opposite side of the river; and in this respect there would be much similarity between that exclusive grant and the one to Messrs. Livingston and Fulton, if the latter were confined to the waters of the Hudson between New-York and Albany. The only difference would be that the one was for a few miles of the river and the other for the greatest part of its extent. Now there are many boat owners in New-York, and perhaps owners of patent team-boats, who would willingly employ them on the Weehock ferry, but they are prohibited from the use of their boats; and yet I dare say it never entered into the head of any man, that they had not a perfect property in their vessels tho' they could not employ them as ferry-boats to Weehock, and though they would

be intercepted if they committed with their patented invention, this invasion of an exclusive right derived under a state grant. These are instances of exclusive rights which have actually existed and do now exist in our state. Many more of the same nature might be cited: But for the sake of further illustration, let us put one single case upon supposition. Suppose the state had granted to an individual a several fishery, or in other words an exclusive right to fish on the waters of Hudson river. And that such a grant might be constitutionally made, I should suppose will not be questioned. If any one has doubts on this subject I beg that he will refer to the case before cited, and read Chancellor Kent's opinion on this point. The Chancellor, then Chief Justice, says, among other things, "Hudson river is the property of this state, "and the legislature have the same jurisdiction "over it that they have over the land or over the "public highways, or over the water of any of "our rivers or lakes. They may, in their sound "discretion, regulate and control, enlarge and "abridge the use of its waters; and they are in "the habitual use of that sovereign right." Suppose any one possessing a net, should desire to employ it in the waters of the exclusive grant, he would be prohibited from doing so, and intercepted in his attempt. And yet it must be admitted, that his right to the net would be as *exclusive* and

unquestionable as his right to any other chattel he might possess.

The distinction between *title* and the unlimited *use* of the thing to which we have title, is too obvious to require further argument.

The constitution of the United States recognises this distinction, and gives to congress power to secure to inventors their exclusive right to their discoveries. The constitution has no where given to congress the authority to decide for each and every state what may be useful to it as a matter connected with its internal and individual affairs. The words, "useful arts," in that instrument, do not convey any such meaning ; nor is there any provision in the patent laws by which a patent might be avoided, as you suppose, because the discovery was in an art not useful. Could congress establish an uniform rule of utility, as well as of naturalization and bankruptcy ? The power to "regulate, control, enlarge or abridge" the use of that right secured to inventors, was reserved to the states, just as it is in respect to all other rights. And they may exercise it in the same way that they may exercise their power to control, enlarge or abridge the use of any other property of an individual to which he has a natural right, or which is secured to him by positive law.

Your view of a part of this subject is certainly correct. Previously to the adoption of the constitution, it had been a question whether

authors and inventors could have any natural or common law right of property in the fruits of their mental labors; and if they had, there was not any mode by which that right could be ascertained and secured to them. The framers of the constitution settled the doubt as to the right. The constitution does not authorize congress to give or convey a right or title to authors and inventors. The power of congress is to secure what the constitution recognizes as a right previously established. The author or inventor is supposed by the constitution to have the same right to his book or his invention that he has to any other property, and congress is under certain regulations to secure this right to him, so that he may enjoy it as he does his other property, that is, exclusively, and so that if any person invade this right he may have redress from the laws, as he would have if his right to any other species of property were violated. The extent to which the patent law has secured the rights, may fairly be inferred from the acts of infringement against which it has given remedies. And further than that, congress has not secured the right nor would the constitution warrant it. Congress has no power, and has never attempted to give or secure to any man a right to use any property whatever. They can no more give to the inventor a right to use his invention, than they can confer on the owner of any chattel a right to use it in defiance of those state laws, by which the use of all property may be reg-

ulated, controled, or abridged. If congress were to pass a law enacting that every patentee or owner of a patented invention should be entitled to use it in any state, notwithstanding any prohibitory laws of that state, such a transcendent violation of the constitution would be regarded by every state in the union as an usurpation on state rights, and would be considered by every lawyer as idle, nugatory and void. What it could not do then by positive act of legislation, it certainly does not do by any implication from the patent law, which by its remedies, has expressly marked out the extent to wh ch it goes. When congress have given to an inventor a title to his discovery; when they have enabled him to ascertain and exhibit such title, and have put it in his power to vindicate his exclusive property by the punishment of its violation, then they have given to the inventor that security for his discovery which the constitution empowered them to give. This is the use and office of a patent: it ascertains the property: it affords the evidence of title, and it enables the patentee to maintain his suit for the invasion of the right.

The object of the constitution is, as you say, to promote the progress of science and the useful arts And the means by which it is to be done, is by securing to authors and inventors an exclusive right to their discoveries. All this is very true: but still it recurs, what is meant by this security? What is to be secured to them? We an-

swer, the right of property is to be secured to them, and nothing more. You say, no: a patentee is not only to have his title secured, but the constitution, and his patent under it, puts him above all control as to the use of his invention. The state laws cannot control, restrain or abridge the subject of a patent. If the state legislature cannot regulate or control the use of an invention whether patented or not, it is beyond the reach of all law, since congress itself has no such power; the constitution certainly has not given it to that body. You must therefore admit, that the use of inventions may be regulated by the state legislatures, or say at once that an inventor in this country is entitled to use his invention, be the public interest what it may, without restraint: and that any law, whether passed by congress or a state legislature, which attempts to control this right, must be unconstitutional!

Can a doctrine so fraught with mischief be supported? Can it be supposed that the individual states ever consented thus to prostrate themselves, and that without even giving to congress an equivalent power? If this be the operation of the constitution and the patent laws, then a patentee may trample not only on the acts of the state legislature, which have been passed to promote the public convenience, and, if you please, the progress of science and the useful arts, by granting exclusive privileges, but on those which

might be passed to preserve the health and morals of the people. Your acts to establish turnpike roads and toll-bridges would be unavailing against a patented vehicle. Your ferry acts would not stand in the way of patented vessels. You could not prohibit the vending of a patented medicine, however pernicious it might be, and you could not restrain the sale of a licentious book, for which there was a copy right, or, in other words, a patent. In all these cases, a patentee, if the right to use as well as the title to his invention is secured by the constitution, would shew his patent and say, this puts me above all restraint, and above all law.

You have very justly remarked that the power of securing to authors and inventors an exclusive right to their writings and discoveries, is but one among the many means there are of promoting science and the useful arts. In reading your argument on this constitutional question, I have been surprised to observe how frequently you had drawn wrong conclusions from correct premises. True! the constitution gives to congress "*power*" (not *the* power) to promote the progress of science and the useful arts, by securing, for limited times, to authors and inventors the exclusive right to their respective writings and discoveries. This security is but one among the many ways in which science and the useful arts may be promoted. But it is the only one that the states have ceded to congress.

It follows then that all other modes of affording this encouragement are reserved to the states. And as the grant of exclusive privileges is one of these modes reserved, the states may make such grants without in'erfering with that power, which by the constitution is conferred on congress.

But really, if I did not understand from your solemn manner and angry expressions, that you were very much in earnest, I might have thought that you were diverting yourself by trying to what extravagant and absurd length you could carry your doctrine with plausibility. It seems that in as much as the duration of a patent right is limited by the constitution to fourteen years, after the expiration of that time the invention is public property ; in your opinion every member of the community, after the fourteen years, becomes invested with the right of the original patentee to use the invention, and the state legislatures cannot control, restrain or abridge that right without a violation of the constitution of the United States. What is the degradation of the state governments if this be a true interpretation of the instrument by which they ceded a portion of their sovereignty? Indeed, it would be a mockery to talk of their sovereignty ; for there is not a municipal corporation which has not had, or at least exercised, the powers which you would deny to this free and independent state. However pernicious the employment of a patented invention might be, the state

could not prohibit its use. Nay, the state government could not prohibit the use of any discovery or invention that ever had been patented, although the patent should have expired long since. So that every patent, as to the thing patented, would make a law which should for ever bind not only the state but congress not to control, restrain, abridge or prohibit its use. Before the state governments acknowledge this surrender of their rights, let them consider how a patent is obtained. "The patent law requires, that every patent shall issue under the sanction of the President, the Secretary of State, and the Attorney General of the United States, but though every patent has the signature of these great personages, yet in fact, it issues without their knowledge, at the pleasure of some person unknown to the constitution or laws, to whom by signing blank patents they commit all their authority: and it is as much a matter of course, upon the production of the proper petition, affidavit and specification, to issue a patent from the patent office, as it is for the proper officer of a court to issue a writ on payment of the customary fees."

Any one then may become a patentee when he pleases, and for what discoveries he pleases; and may by the potency of his patent, prevent the states to all eternity from passing any act that may in any wise interfere with the use of the thing patented.

But let us apply this doctrine to the very case of steam boats, under circumstances which it is

easy to suppose may have presented themselves. Suppose the boat of Fitch, for which he obtained a patent in 1791, to have been, as you say it was, in substance the same with the boats of Livingston and Fulton; that after a successful experiment with her, he and his associates, from want of confidence, want of enterprise, want of funds, or any other cause, totally abandoned all thoughts of navigation by steam.

Suppose that, subsequently to the expiration of Fitch's patent, Chancellor Livingston had represented to the legislature, that from an attentive consideration of what others had performed, he had possessed himself of a mode of propelling boats by steam; but that it could not be done without a very great expense: That notwithstanding the confidence he had in the efficacy of his plan, the failure of so many similar attempts had convinced him, that it was an uncertain and hazardous experiment; that if he should successfully execute his project, there would be so many competitors for the advantages it might afford, that he would not bestow his time and expend his fortune to accomplish it, unless the state would contract that if he should prove successful he should enjoy some exclusive privilege. Now, you contend that under these circumstances the state legislature, however convinced they might have been, that no one would undertake the expensive, uncertain and hazardous enterprise, without the encouragement

which the Chancellor required ; and that the contract the Chancellor proposed, would be advantageous to the state ; yet, according to the interpretation of the constitution which you maintain, the state could not have entered into such a contract, because Fitch had once obtained a patent for the plan of which the Chancellor was possessed ; and although that patent was expired, yet it was a spell upon the state legislature, and restrained it from adopting such a measure, however decided might be the opinion that it would be conducive to the public good.

But your principles lead you one step further, and you have not hesitated to pursue it, notwithstanding it exposes the monstrous absurdity of your whole doctrine. You contend, that in as much as congress have by the constitution power to promote the progress of "science and the useful arts," they have all power on this subject ; and that every state act which embraces these objects is unconstitutional. Hence, you conclude, not only that the states can pass no law giving encouragement to a new discovery or new invention, whether patented or not, but that they cannot, by an act of the state legislature, grant any privileges which may invite the introduction and use of any improvement in agriculture or in any of the mechanic arts, or in the sciences, which may have been made at home or abroad. So that, although, (as the Chancellor did not profess to be the inven-

tor of steam navigation when he applied for the act of 1798, but only possessor of a mode of propelling boats by steam) he could not have a patent: yet, as that act was professedly passed to promote "the progress of science and the useful arts," it was a nullity, because any assumption by the state of a power which had been wholly granted to congress was void. This is a doctrine transcending any thing I have before heard contended for by the most zealous federalist. And if it could be maintained, our state legislatures would be as insignificant as the members of any municipal corporation. Indeed, more so, for these as I have said, have exercised powers which under your construction of the constitution would be denied to the states.

Improvements have been made in almost every branch of the arts and sciences, which have not yet been introduced into our country. Many of them depend on principles which are known to but a few, and these find an advantage in keeping their knowledge secret. Let us suppose that a person should represent to the state legislature that he had knowledge of a process of rotting and bleaching flax, which was practised in Europe, and which was found to be very advantageous not only as it saved time, trouble and expense, but as it rendered the material much more valuable for the manufacturer; that for this process he could not obtain a patent, because he had no claim as an

inventor; and therefore, he would not give the public the benefit of his knowledge unless the state legislature would grant, for a limited time, an exclusive right to use the process. Till you suggested this entirely new idea, that the states had parted with all power to promote the progress of science and the useful arts, I am certain it did not enter the mind of any man, that the legislature could not, without violating the constitution of the United States, encourage the introduction of a process which would be so advantageous by giving an exclusive right.

But, as congress have no other means of promoting the progress of science and the useful arts, than by securing to authors and inventors an exclusive right to their respective writings and discoveries, they could pass no law to encourage the introduction of any such useful improvements as I have mentioned. It follows then, that there is no power in either the state legislatures or the national legislature to pass any law by which the introduction of foreign improvements in the arts and sciences may be invited or encouraged. And tho' this be part of the power of every other sovereign on earth, and though it must be admitted that each particular state possessed it previously to the adoption of the constitution, yet since we have become a member of the union, we have lost this part of the sovereign power which we before enjoyed. And what is remarkable, it is gone from us in virtue of

our being a party to the confederation, although it is admitted that by the constitution, or instrument by which we become a party, we have not made this important cession to the national government.

The conclusions that necessarily follow from this exposition of your arguments are so obvious that I shall not attempt to draw them : They cannot be mistaken by the most common understanding ; nor sanctioned by any one who has a desire to preserve to the states those " powers not delegated to " the United States by the constitution, nor pro- " hibited by it to the states, but which are re- " served to the states respectively."

But you have still another entrenchment to which you retreat. " Let it be allowed," you say, " that the states may prohibit within their respective jurisdictions, the use of an invention to which an exclusive right has been secured by patent, such a prohibition to be valid must surely be founded on motives of general policy and public good, and the use of the invention must be proscribed as pernicious in itself, either from the nature of the discovery or the peculiar conditions and circumstances of the community in which it is sought to be introduced." This doctrine, as expressed by you, I deny. Such a prohibition, to be wise and discreet, should be founded on motives of general policy and public good, and the use of the invention ought to be proscribed to motives similar to what you have mentioned. If you

concede that the states may prohibit the use of a patented invention within their jurisdiction, the constitutional question is surrendered; there is no longer any room for controverting the validity of the law, and it must be discussed like every other legislative, and not unconstitutional measure, upon considerations of general policy and public good. I do therefore now, and long before I was interested in what you are pleased to call Mr. Fulton's monopoly, I did, but without hazarding my character as a lawyer, "venture the assertion, that "a state may *rightfully* prohibit the use of an in- "vention secured by patent and confessed to be "beneficial, lest it should interfere with the sup- "posed extent of a state grant." And that it may in consequence of "the plenitude of its au- "thority forbid to the patentee the exercise *of his* "*right*," (if you mean thereby *the use* of his patented invention) without the license of what you think fit, by a very unlawyer-like abuse of the terms to call, "the state monopolists." But here it is proper to fix the meaning of one of the terms you have used. If by *rightfully*, you mean constitutionally, the position which you think I would not venture, is true in its utmost extent, and neither "contemns or violates the fundamental pro- "visions of the national compact, that the con- "stitution and laws of the United States shall be "the supreme law of the land." But if by rightfully, you mean *discreetly and properly*, that will

always depend upon the peculiar circumstances of each individual case. If the use of the patented invention would only interfere with the *supposed extent* of the state grant, the prohibition probably would not be discreet or proper: but if it interfered with the *actual extent* of the state grant, the prohibition would be, in every sense of the word, rightful. The question thus turning upon the peculiar circumstances of each case, I shall confine myself to that of Livingston and Fulton. I think the bargain made with them by the state, was wise, discreet and proper. On the condition of obtaining a real and certain good it agreed to prohibit, for a stipulated time, the introduction of other similar establishments, even though they might possibly contain improvements not then known or thought of, and which it was very likely would never have existence, it consented to surrender for a certain and most valuable advantage, and for a limited time, the benefit of vague and possible discoveries. This bargain was discreet, wise and proper; the prohibition which grew out of it, of the use of a beneficial invention secured by patent (if such should subsequently be made) during the term of the grant, was therefore *rightful*, and founded on motives "of general policy and public good;" and the use of the possible future invention, was "proscribed," or rather *prohibited*, from "the peculiar condition and circumstances of the country in which it might be sought to be introduced."

I shall take the opportunity, while discussing this constitutional question, of noticing a fact which I think would in itself prove that I was warranted in asserting, as I have done in the life of Fulton, that the committee were ignorant on the subject on which they affected to give the house information. And that they were content with the representations of the petitioner.

The committee in their report, put forward the patent taken out by Fitch in 1791, as an important feature in their objections to the law passed in favor of Mr. Livingston in 1798.

Now it is a fact, that Mr. Fitch never did obtain a patent, which under the laws of the United States, gave or secured to him any right whatever.

The first law under which Fitch took his patent required as the present law does, that the patentee of a machine should "fully explain the principles and several modes in which he has contemplated the application of that principle or character by which it may be distinguished from other inventions, and that he should accompany the whole with drawings and written references, when the nature of the case admits of drawings," "which description, signed by himself and two witnesses, shall be filed in the office of the secretary of state."

This description is what is commonly called a specification, and without a compliance with these provisions of the patent law, a patent is certainly void. When Governor Ogden, in consequence of

some of Mr. Emmet's observations, produced before the house his exemplification of Fitch's patent, and handed it to Mr. Emmet while he was speaking (the first time and place of its being seen by those who opposed the application) he immediately objected to the patent, on this ground. He contended it was a nullity ; gave Fitch no right whatever, because there was no specification. Governor Ogden met the objection by a declaration, that the patent law, which was in force when Mr. Fitch took his patent, did not require a specification.

As a volume containing the first patent law could not be readily produced, his error was not immediately detected ; but in the afternoon of the same day, Mr. Emmet having procured the book during the recess, shewed the original patent law, containing the same provisions with respect to a specification that are in the law now in force.— The effect of this was such, that Fitch's patent was no more spoken of by Governor Ogden, either here, or afterwards in the controversy in New-Jersey, as I have heard. But, the committee could not have made an enquiry on this subject. If they had only taken the trouble to look into the first patent law, and at Mr. Fitch's patent, they must have seen that Fitch's patent was good for nothing. But "they were content with the representations of the petitioner," and reported on the patent of Fitch, as if no objection to it existed.

That they were content with those representations, is "true in fact." if they never looked at the patent, or examined the law If they did. "they were ignorant of the subject on which they affected to give the house information."—When we find the most artificial and technical rules, arranged in all the solemnity of legal language, against the validity of the laws passed in favor of Livingston and Fulton, it must afford ground to believe, that if such a fatal objection as was urged to the validity of Fitch's patent, had existed against them, it would not have escaped the investigation of the committee or notice in their report. I feel myself therefore perfectly authorised, to urge the great stress laid in the report on that patent, and also on Governor Ogden's ten dollar assignment to him of an expired right to an administrator, to whom letters were granted several years after it had ran out by time, and in a place where Fitch had not died and never had lived, and where he left no property, as charges against the committee to the same purport, and in addition to those mentioned in the life of Fulton. But I will go one step further.—You were present, and a very attentive listener to Mr. Emmet's argument before the house; it is therefore scarcely possible you can have forgotten the incident I have just stated; for the impression produced by his reading the old patent law, was very striking. How comes it then, that you still, in your letter, display "the patent obtained

by Fitch from the government of the United States," as one of the " grounds more relative" to Governor Ogden's success, and one which I had most uncandidly suppressed. If it be a failure of memory, it must derogate very much from the credit due to your statements from recollection. If it be not, " I should once have supposed it unworthy of you sir."

I have dwelt longer on this constitutional objection to the state laws in favor of Livingston and Fulton than I intended. I beg it may be recollected, that I have not proposed to enter into a full discussion of the subject: for that, as I before remarked, I refer to the reported case of Livingston against Van Ingen and others, which I trust every man interested in judging on this question will attentively consider before he suffers himself to form a decisive opinion, on which the fortunes of orphan children and of many of his fellow citizens may depend. There are also two pamphlets, written with great ability by the late Chancellor Livingston, which any one desirous of having a full view of the subject should peruse.*

* The first of these pamphlets is entitled " An enquiry into the effect that a patent might have upon the exclusive privileges granted by the state to Messrs. Livingston and Fulton. E. Conrad, printer. " Frankfort-street, New-York," (no date.)

The other pamphlet is entitled " The right of a state to grant exclusive privileges in roads, bridges, canals, navigable waters, &c. vindicated, by a candid examination of the grant from the state of New-York to, and contract with Robert R. Livingston and Robert Fulton, for the exclusive navigation of vessels by steam or fire, for a limited time, on the waters of said state and within the jurisdiction thereof.

Printed by E. Conrad, Frankfort-street, opposite the new Republican Hall, New-York, 1811."

I feel satisfied that I have exposed the fallacy of the only argument on this constitutional question which your book has presented, and relying on what has been so much more ably done by others than I could do myself, I shall not further pursue this branch of the subject.

Another objection is made to the exclusive grant in question, founded on its supposed interference with that part of the constitution of the United States, which empowers congress "to regulate commerce with foreign nations and among the several states, and with the Indian tribes."

You have not indeed put forward this objection with great confidence in any thing you have said as from yourself; but it is prominently conspicuous in the reasoning of Governor Ogden, which to your enlarged and liberal mind, appears so conclusive.

Upon this subject I shall be very brief, and I shall content myself with presenting the answers to this objection, given by the Judges in the case of Livingston vs. Van Ingen. Judge Yates, in giving his opinion on that case, says :—

"The laws granting this exclusive privilege to
"the appellants cannot interfere with the regu-
"lation of commerce. It never could have been
"intended that the navigable waters within the
"territory of the respective states, should not be
"subject to their municipal regulations. Such
"a construction might, with equal propriety, be

" applied to turnpike roads, ferries, bridges, and " various other local objects, and thus, in the " vortex of this construction, almost all subjects " of legislation would be swallowed up, and it " might, eventually, lead to the total prostration of " internal improvements.

" To all municipal regulations, therefore, in " relation to the navigable waters of the state, ac- " cording to the true construction of the constitu- " tion, to which the citizens of this state are sub- " ject, the citizens of other states, when within " the state territory, are equally subjected ; and " until a discrimination is made, no constitutional " barrier does exist. The constitution of the Uni- " ted States intends that the same immunities and " privileges shall be extended to all the citizens " equally, for the wise purpose of preventing lo- " cal jealousies, which discriminations (always " deemed odious) might otherwise produce. As " this constitution, then, according to my view, " does not prevent the operation of those laws " granting this exclusive privilege to the appel- " lants, they are entitled to the full benefit of " them."

The present Chief Justice Thompson, in giving his opinion, expresses himself on this part of the case, as follows :

" The objection to the laws under considera- " tion, on the ground that they interfere with the " power given to congress, " to regulate com-

" merce with foreign nations, and among the sev-
" eral states, and with the *Indian* tribes," is less
" colourable than the former ; for admitting the
" power here granted to belong exclusively to the
" general government, it does not, in any manner
" whatever, interfere with these laws, or extend
" to the rights and privileges which they are in-
" tended to secure. They neither concern foreign
" commerce, nor commerce among the several
" states, nor with the *Indian* tribes, but only give
" to the appellants the exclusive privilege of nav-
" igating all waters, *within* the jurisdiction of this
" state, by every species of boat or water-craft,
" which might be impelled by force of fire or
" steam. If this can, in any sense, be considered
" a regulation of commerce, it is the internal
" commerce of the state, over which congress has
" no power ; and if the right to regulate internal
" commerce, or the intercourse between different
" parts of the state, ever belonged to the state
" government, it is still retained ; for it never has
" been, either expressly or impliedly, yielded to
" the general government. To deny to the legis-
" lature this right, would be at once striking from
" our statute book grants, almost innumerable, of
" a similar nature ; all our turnpike roads, toll-
" bridges, canals, ferries, and the like, more or
" less concern commerce, or the intercourse be-
" tween different parts of the state, and must de-
" pend on the same principles with the privileges

" granted to the appellants. The truth, however, " is, that none of them relate to commerce within " the sense and meaning of the term as used in " the constitution ; they are mere municipal reg- " ulations, with which congress have no concern. " It can answer no valuable end, to enter into any " speculative inquiry as to what would be the ef- " fect upon the appellants' rights under these laws " should congress, in regulating commerce, in- " terfere with them. No such interference has as " yet arisen, and it will be time enough to con- " sider that question when it does arise. The " general and conclusive answer, however, to all " such supposed collisions of powers, is what has " already been mentioned, that the laws of con- " gress are paramount, and must prevail."

The present Chancellor Kent, then Chief Justice, gives his opinion on the point under consideration, in the following words :

" 1. As to the power to regulate commerce.

" This power is not, in express terms, exclusive, " and the only prohibition upon the states is, that " they shall not enter into any treaty or compact " with each other, or with a foreign power, nor lay " any duty on tonnage, or on imports or exports, " except what may be necessary for executing their " inspection laws. Upon the principles above laid " down, the states are under no other constitutional " restriction, and are, consequently, left in posses- " sion of a vast field of commercial regulation ; all

" the internal commerce of the state by land and
" water remains entirely, and I may say exclusive-
" ly, within the scope of its original sovereignty.
" The congressional power relates to external
" not to internal commerce, and it is confined to
" the *regulation* of that commerce. To what ex-
" tent these regulations may be carried, it is not
" our present duty to enquire. The limits of this
" power seem not to be susceptible of precise defi-
" nition. It may be difficult to draw an exact line
" between those regulations which relate to exter-
" nal and those which relate to internal commerce,
" for every regulation of the one will, directly or
" indirectly, affect the other. To avoid doubts,
" embarrassment and contention on this compli-
" cated question, the general rule of interpretation
" which has been mentioned, is extremely saluta-
" ry. It removes all difficulty, by its simplicity
" and certainty. The states are under no other
" restriction than those expressly specified in the
" constitution, and such regulations as the nation-
" al government may, by treaty, and by laws,
" from time to time, prescribe. Subject to these
" restrictions, I contend, that the states are at li-
" berty to make their own commercial regulations.
" There can be no other safe or practical rule of
" conduct, and this, as I have already shown, is
" the true constitutional rule arising from the na-
" ture of our federal system. This does away all
" colour for the suggestion that the steam boat

" grant is illegal and void under this clause in the
" constitut on. It comes not within any prohibi-
" tion upon the states, and it interferes with no
" existing regulation. Whenever the case shall
" arise of an exercise of power by congress which
" shall be directly repugnant and destructive to
" the use and enjoyment of the appellants' grant,
" it would fall under the cognizance of the feder-
" al courts, and they would, of course, take care
" that the laws of the union are duly supported.
" I must confess, however, that I can hardly con-
" ceive of such a case, because I do not, at
" present, perceive any power which congress
" can lawfully carry to that extent. But when
" there is no existing regulation which interferes
" with the grant, nor any pretence of a constitu-
" tional interdict, it would be most extraordinary
" for us to adjudge it void, on the mere contin-
" gency of a collision with some future exercise of
" congressional power. Such a doctrine is a mon-
" strous heresy. It would go, in a great degree,
" to annihilate the legislative power of the states.
" May not the legislature declare that no bank
" paper shall circulate, or be given or received in
" payment, but what originates from some incor-
" porated bank of our own, or that none shall cir-
" culate under the nominal value of one dollar?
" But suppose congress should institute a national
" bank, with authority to issue and circulate
" throughout the union, bank notes, as well below

" as above that nominal value: This would so far
" control the state law, but it would remain va-
" lid and binding, except as to the paper of the
" national bank. The state law would be abso-
" lute, until the appearance of the national bank,
" and then it would have a qualified effect, and
" be good *pro tanto.* So, again, the legislature
" may declare that it shall be unlawful to vend
" lottery tickets, unless they be tickets of lotteries
" authorized by a law of this state, and who will
" question the validity of the provision? But sup-
" pose congress should deem it expedient to estab-
" lish a national lottery, and should authorize
" persons in each state to vend the tickets, this
" would so far control the state prohibition, and
" leave it in full force as to all other lotteries.
" The possibility that a national bank, or a na-
" tional lottery, might be instituted, would be a
" very strange reason for holding the state laws
" to be absolutely null and void. It strikes me to
" be an equally inadmissible proposition, that the
" state is devested of a capacity to grant an exclu-
" sive privilege of navigating a steam boat,
" within its own waters, merely because we can
" imagine that congress, in the plenary exercise
" of its power to regulate commerce, may make
" some regulation inconsistent with the exercise of
" this privilege. When such a case arises, it will
" provide for itself; and there is, fortunately, a
" paramount power in the supreme court of the

" *United States* to guard against the mischiefs of " collision.

" The grant to the appellants may, then, be " considered as taken subject to such future com- " mercial regulations as congress may lawfully " prescribe. Cengress, indeed, has not any direct " jurisdiction over our interior commerce or wa- " ters. *Hudson* river is the property of the peo- " ple of this state, and the legislature have the " same jurisdiction over it that they have over the " land, or over any of our public highways, or over " the waters of any of our rivers or lakes. They " may, in their sound discretion, regulate and con- " trol, enlarge or abridge the use of its waters, and " they are in the habitual exercise of that sover- " eign right. If the constitution had given to " congress exclusive jurisdiction over our naviga- " ble waters, then the argument of the respon- " dents would have applied ; but the people never " did, nor ever intended, to grant such a power ; " and congress have concurrent jurisdiction over " the navigable waters no further than may be in- " cidental and requisite to the due regulation of " commerce between the states, and with foreign " nations.

" What has been the uniform, practical con- " struction of this power ? Let us examine the " code of our statute laws. Our turnpike roads, " our toll-bridges, the exclusive grant to run stage- " waggons, our laws relating to paupers from

" other states, our *Sunday* laws, our rights of fer-
" riage over navigable rivers and lakes, our auc-
" tion licences, our licences to retail spirituous li-
" quors, the laws to restrain hawkers and pedlars ;
" what are all these provisions but regulations of
" internal commerce, affecting as well the inter-
" course between the citizens of this and other states,
" as between our own citizens? So we also exercise,
" to a considerable degree a concurrent power
" with congress in the regulation of external com-
" merce. What are our inspection laws relative
" to the staple commodities of this state, which
" prohibit the exportation, except upon certain
" conditions, of flour, of salt provisions, of certain
" articles of lumber, and of pot and pearl ashes,
" but regulations of external commerce? Our
" health and quarantine laws, and the laws pro-
" hibiting the importation of slaves are striking
" examples of the same kind. So the act rela-
" tive to the poor, which requires all masters of
" vessels coming from abroad to report and give
" security to the mayor of New-York, that the
" passengers being aliens, shall not become
" chargeable as paupers, and in case of default,
" making even the ship or vessel from which the
" alien shall be landed liable to seizure, is another
" and very important regulation affecting foreign
" commerce.

" Are we prepared to say, in the face of all these
" regulations, which form such a mass of evidence

" of the uniform construction of our powers, that
" a special privilege for the exclusive navigation
" by a steam boat upon our waters, is void, be-
" cause it may, by possibility, and in the course
" of events, interfere with the power granted to
" congress to regulate commerce? Nothing, in
" my opinion, would be more preposterous and
" extravagant. Which of our existing regula-
" tions may not equally interfere with the power
" of congress? It is said that a steam boat may
" become the vehicle of foreign commerce; and,
" it is asked, can then the entry of them into this
" state, or the use of them within it, be prohibited?
" I answer, yes, equally as we may prohibit the en-
" try or use of slaves, or of pernicious animals, or
" an obscene book, or infectious goods, or any
" thing else that the legislature shall deem nox-
" ious or inconvenient. Our quarantine laws a-
" mount to an occlusion of the port of New-York
" from a portion of foreign commerce, for several
" months in the year; and the mayor is even au-
" thorized under those laws to stop all commercial
" intercourse with the ports of any neighbouring
" state. No doubt these powers may be abused
" or exercised in bad faith, or with such jealousy
" and hostility towards our neighbours, as to call
" for some explicit and paramount regulation of
" congress on the subject of foreign commerce,
" and of commerce between the states. Such
" cases may easily be supposed, but it is not logic-

" al to reason from the abuse against the lawful
" existence of a power ; and until such congres-
" sional regulations appear, the legislative will of
" this state, exercised on a subject within its ori-
" ginal jurisdiction, and not expressly prohibited
" to it by the constitution of the United States,
" 'must be taken to be of valid and irresistible au-
" thority."

In these opinions every member of the Court of Errors (except those who declined expressing their sentiments on account of their connection with some of the parties) concurred.

After giving the opinion of Judge Yates, the reporter says, " Van Ness, Justice, was of the same opinion, and gave his reasons." You say it is stated that they were stronger on one point than those of any of the other Judges. It must be inferred that you mean to say, it was much more decisively in some respect, in favor of that side of the question which you are so zealously laboring to maintain. Pray, by whom is it so stated ? for you do not profess to assert it from your own knowledge—It is certainly not so stated by the reporter. I must protest against the attempt you have made in this manner to put the weight of Judge Van Ness's high judicial character on your side. Nor will I permit myself, for a moment, to think he has allowed you to do it. If the official reporter of his own court did not do him justice, in stating that he concurred in the opinion delivered by Judge Yates, I do not believe Judge

Van Ness would have left the error to be corrected by you, in such a controversial writing as you have produced.

Relying with implicit confidence on the irrefragible arguments of the distinguished legal characters who have so fully and decisively expressed their opinions on this part of the controversy, I shall not attempt to add any thing of my own ; but will proceed to take some notice of the few remaining points which your publication presents for consideration.

You aver, the law which you recommended to the legislature as one that might be passed consistently with the faith, honor and justice of the state, was not (as I have alleged in the life of Fulton) in effect a repeal of the exclusive grants to Livingston and Fulton ; that it was only such a modification of the remedies as the state might properly make, and as would leave the right unimpaired.

Here again is an ample field for the display of your legal knowledge, and you have certainly availed yourself of so fair an opportunity to exhibit the technical learning with which your professional practice in the country must have made you very familiar.

But in all the discussions of the important questions which this controversy has presented, you have the merit of being the first professional gentleman who has thought of appealing to the law of

landlord and tenant for legal authority. I shall not dispute the profundity of your legal acquirements, so conspicuously manifested by your quotation from the statute of "*quia emptories*" nor the depth of learning displayed in your dissertation on "*rent charge*" and "*rent seck.*" I can easily perceive what potency these hard words may heretofore have had, when thundered in the ears of some unfortunate justice, by an able and eloquent practitioner. But such learning, permit me to suggest, is quite out of place on this occasion. It is not, and never has been disputed, but that the legislature may, if it pleases, take away all the remedies which are given for securing the enjoyment of the rights granted to Messrs. Livingston and Fulton It has, unquestionably, the *power* to say, there shall no longer be any penalties. And when the advocates of the exclusive right have so repeatedly and explicitly admitted, that (except so far as it is restrained by the provisions of the United States' constitution, impairing the obligations of a contract) the legislature might, if they chose so to do, take away the grant itself. It was not to be expected, that for the sake of introducing a little law latin, it would be assumed, that the power of the legislature to dispose of the penalties as they should think proper, had been denied. Let me once more remind you, that the question is not as to the *power* of the state, but as to what the legislature may do, consistently with

"faith, honor and justice." I can not but think that any man may be more satisfied on these points by an appeal to his own conscience and common sense, than by perusing a page of Woodfall's tenant law; which, by the by, I believe contains almost all the learning you have displayed. Lawyers are so used to have their minds controlled by book authority, that they seldom dare to think on any subject without first referring to their libraries. And if you were to consult a black-letter lawyer, as to the spots on the sun, he would perhaps refer you to the statute of *quia emptores*, or talk to you of *rent seek* and *rent charge*. And I protest I think he might do it with as much relevancy as you have displayed by bringing this kind of learning into a discussion relative to steam boats.

It will be convenient to place in one view, the provisions relating to forfeiture, of the several legislative acts.

That passed in favour of John Fitch, by the state of New-Jersey, in 1787, (and which was the model for all those upon this subject passed by New-York, down to the act of 1811) forfeited to Fitch any boat navigated on the waters of that state by steam, without the authority of Fitch. The first act of this state, passed in favor of Fitch the following year, as respects the forfeiture, was precisely in the words of the New-Jersey act. It is not a little singular, that one of the first persons to object to the laws of this state, on the grounds

of their impolicy as well as their unconstitutionality, should be a citizen of New-Jersey: which state set the example of such a law, and was the last to sanction the principles of her first law, by a re-enactment of its provisions but a short time before her citizen, Governor Ogden, came here to instruct our legislature as to its constitutional powers, its duties, and its obligations. It is remarkable also, that while our own citizens have acquiesced in the constitutionality and justice of the proceedings of our own legislature, and after the laws it has passed have been approved of by so many filling our most exalted and honourable stations, with what complacency we receive the suggestions of wise men, who have had the goodness to come from the east, and from the west, to instruct our legislative bodies. We seem to have listened to these patriotic instructors with grateful attention; upon the ground, I presume, that they were more disinterested advisers than our own high judicial characters, who, it is possible, were suspected of some partiality to our own citizens.

The first act of 1798, in favor of Mr. Livingston, is so far precisely the same as that passed in favor of Fitch in 1787, that the latter refers to the former, and grants the penalties and forfeitures to Mr. Livingston in no other way than by enacting, "that privileges similar to those granted to the said John Fitch, in and by the before mentioned act, be and they were thereby extended to

the said Robert, for the term of twenty years," &c.

The acts of 1799, 1803 and 1807 are the same. The forfeitures and penalties are only given by a reference to the first act.

The first steam boat ran on the Hudson, through the summer of 1807, and demonstrated by her performance, the practicability of this mode of navigation. It was very soon seen that, in proportion as it would be advantageous to the community generally, it would be detrimental to some individuals. There seldom has been a more striking instance of the influence of the bad passions of our nature, than was produced by the success of Mr. Fulton. From the moment it was foreseen, that steam boats would, in a great measure, supercede all other modes of conveying passengers, Mr. Fulton was assailed by that envy and jealousy which pursued him with bitterness to his grave. Many of those who had been the most forward to ridicule his project, while it was in experiment were the first to endeavor to deprive him of the credit, and fruits of his success. The interested united with those unhappy beings, who sicken at prosperity in which they do not share, who are ambitious to be distinguished without capacity to earn distinction, and whose lives are passed in efforts to elevate themselves by depressing others. These dispositions shewed themselves in various modes, but were most openly manifested by at-

tempts to injure or destroy the first boat. It was proved by many affidavits, that she had been several times designedly run down while she was navigating the Hudson; and there were grounds to apprehend, that combinations were, or would be, formed to destroy her.

Messrs. Livingston and Fulton were, therefore, induced to apply to the legislature for a law which might protect their property from these wicked attempts. Upon this application the legislature passed the law of 1811, by which it is enacted, that persons combining or attempting to injure or destroy any boat or vessel navigating the waters of this state, shall be considered as guilty of a misdemeanor, and shall be fined in a sum not exceeding two thousand dollars, or be imprisoned for a time not exceeding twelve months, or both, in the discretion of the court.

None of the former acts in favor of Messrs. Livingston and Fulton gave, as has been mentioned, the forfeitures or penalties in express terms, or otherwise than by reference to the act passed in 1787, in favor of Fitch. This, however, was regarded as inadvertance, it having been doubtlessly intended to give the penalties as well as the rights. For the sake of greater formality and security therefore, the forfeitures which had been granted to Fitch were by express words granted to Messrs. Fulton and Livingston.

But the legislature, having seen what would be

the great advantages of steam navigation, and duly appreciating the merits of those to whose enterprise, exertions and pecuniary hazard we were indebted for it, availed themselves of this opportunity of extending, on the solicitation of Messrs. Livingston and Fulton, the grant ten years, by enacting, that their privilege should be extended five years for each additional boat ; provided that their exclusive privilege should not exceed in the whole the duration of thirty years. That the nature of the engagement between Messrs. Livingston and Fulton and the state, might be well understood, the legislature also spoke of it as a *contract.* And I ask, has it not all the features of a contract ? It is a mutual agreement. On the one hand, Messrs. Livingston and Fulton, offering to spend their money and to run the risk of employing their steam boats on the waters of this state, provided the legislature will grant them certain privileges ; and on the other, the state accede to their propositions, and engage, that if they will effectually employ such boats, they shall have the consideration of an exclusive privilege for a certain time.

I rely with great confidence on this plain history of the steam boat laws, to refute all your learning and all your logic. It presents the claims of Messrs. Livingston and Fulton, in so striking a light, that when the appeal is to the understanding and consciences of mankind, I do not believe,

that the united efforts of Governor Ogden, in his "conclusive reasoning," and of yourself, can confound the voice of justice by the repetition of irrelevant professional jargon. Be assured, that men of common understandings and common feelings, will not be misled by any solemnity in referring to the statute of *quia emptores*, nor any essays on *rent seck* and *rent charge*. Technical law language "*in pari materia*," "*per se*," "*manu forti*," &c. depend upon it, will no more influence those who may have to decide this controversy, than the scraps of Latin and English poetry, which a man who affects belles-letter learning, might extract from his common place-book to ornament his style.

The last act of the legislature on this subject, remains yet to be considered. And I shall introduce it, as I have the others, by a short notice of the circumstances which induced the legislature again to interpose their authority for the protection of their grantees.

In the year 1810, a number of persons, most of them residing at Albany, who found that their interest would be affected by the steam boats, associated for the purpose of establishing some mode of navigation, which might in part restore to them the advantages of which the new establishment had deprived them. It did not at first enter their heads, to set at defiance the laws of the state granting an exclusive right to Messrs. Livingston and

Fulton. An ingenious projector had persuaded them, that a boat might be propelled by a pendulum, with as much velocity as she could be by steam. But experiment having convinced them that this project would not answer their purpose, they determined, at all hazards, to have steam boats; and in the latter part of 1810, commenced building two in this city, which were to be propelled by steam, precisely on Mr. Fulton's plan. Indeed, it was obvious that they were to be exact copies of his boats.

It was foreseen, that if these were put in motion and could not be immediately stopped, they would prove ruinous to Messrs. Livingston and Fulton, who had then their boats in operation, and had expended in experiments and in the establishment of these boats, between two and three hundred thousand dollars. It was not certain that the Chancellor would exert his authority to arrest this violation of the law by issuing an injunction, or that he would grant that remedy on any future occasion.

Messrs. Livingston and Fulton, seeing that a forfeiture of a boat which violated their grant, would be an unavailing remedy, unless they could have some summary mode of enforcing the forfeiture, made a new application to the legislature; and the act of April, 1811, was passed. But they did not see fit to give it a retrospective effect so as that it might be applied to the Albany boats

which had then been constructed, or to another on Lake-Champlain which was then in the same situation. As to these, the parties were left to their remedies at common law, or under the prior acts. But to guard against future similar infractions, the act of 1811 provided, that a forfeiture of any boat, for a violation of the exclusive right, should be deemed to accrue on the day on which she should be put in motion in contravention of the prior acts: And that Messrs. Livingston and Fulton, their associates and assigns, should have the same remedy for the recovery of such boat, as if she had been tortiously and wrongfully taken out of their possession. The act further provided, that when any suit was brought for the recovery of a forfeiture, the Chancellor should grant an injunction to stop the boats, and should prevent her being removed out of the jurisdiction of the court, pending the suit.

Previous to the passing of this act, the Albany pendulum boats, which had been converted into steam boats, were put in operation. They were exact copies of Fulton's without an attempt, even for the sake of disguise, to make the slightest variation. Though Fitch's patent had expired, though his plan, which according to the report of the committee, was in substance the same as Fulton's, was open to them, and they might have used it without involving themselves in any controversy about Fulton's patent, yet they chose to resort to

an exact imitation of his boats. I do not believe you could prevail on any person who was embarked in that enterprise, to agree with the committee, that the plan of Fulton and the plan of Fitch were in substance the same. If they had entertained such an opinion they would undoubtedly have yielded to the many reasons there were to induce them to prefer the plan of Fitch.

The consequences which Messrs. Livingston and Fulton had anticipated from the establishment of the Albany boats, were fully realized. There was a combination to break down Messrs. Livingston and Fulton, which it was obvious they could not resist. The owners of the Albany boats having their residence in this city, being intimately acquainted with all its inhabitants, and their influence extending to the remotest parts of the state, were enabled to divert almost all the passengers from the boats of Messrs. Livingston and Fulton. The Albany proprietors had not only their agents in every tavern in this city, but their emissaries on every road. These men made it their business, not only to seduce to the boats of their employers the persons who wanted a passage to New-York, but to traduce Mr. Livingston and Mr. Fulton by the most wanton misrepresentations. Such an effect did this wicked industry produce, that the latter gentleman was looked upon by many who had hearkened to his calumniators, as a vile impostor; and often have I listened with indignation to his

calm and magnanimous recitals of the personal abuse and indignities he was daily accustomed to meet. Sir, I think your posterity will blush for the part you have taken against this man, and the family he has left to the mercy of the world. Should the efforts which are making succeed, and they be reduced to poverty, so help me God, I would not for an hour stand in your place, though you should obtain, by the course you are pursuing, all the celebrity and advantage with which you may have been flattered by a delusive imagination.

I was once myself a witness of the effects of these measures. In the summer of 1811, I was a passenger on board the Paragon, then new and recently established, confessedly, in every respect, and particularly as to accommodation and speed, superior to the Albany boats. Chancellor Livingston was himself on board; and I recollect that Mr. Jacob Barker and his wife, and I think Mr. Walter Bowne, now a senator from the southern district, were also among the passengers, who in the whole were eighteen. We started a few minutes before one of the Albany boats. Something happened to our machinery before we had got far from the wharf, which stopped us, and enabled the Albany boat to go ahead. She must have had upwards of an hundred passengers on board: her decks were absolutely crowded. I wish you could at that moment have seen the Chancellor, and heard his reflections. I think too well of you

not to suppose they would have had an effect on your feelings. For my own part, all his philosophic considerations on the nature of man, which reconciled him to the events, as the result of those evil dispositions of human nature which we ought to be prepared to meet and bear with fortitude, did not, though I had not then any pecuniary interest in the establishment, diminish my detestation of such injustice and ingratitude.

In September in that year, Messrs. Livingston and Fulton filed their bill in Chancery for an injunction; which, upon an appeal from the Chancellor's denial, was granted and made perpetual by an unanimous decision of the Court of Errors.

They decided, that the law of 1798 was not invalid, though it was passed before the term limited for Fitch's exclusive right was expired.

They decided, that the subsequent laws were so many confirmations of the exclusive right originally granted to Mr. Livingston.

They decided, that the states had reserved the power to make such exclusive grants, and that they were not in violation of the constitution of the United States, either as interfering with the power ceded to congress to promote the progress of science and the useful arts, or to regulate commerce.

And, they unanimously decided, that a perpetual injunction should be granted.

Had not these boats been stopped by this summary process; had Messrs. Livingston and Ful-

ton been obliged, according to the decision of Chancellor Lansing, to look on at these boats in operation till the forfeiture could have been established by a suit, which would unquestionably have been delayed by bills of exception, writs of error, and all those means, which the practice of our courts afford, and which might have procrastinated a final decision for several years; Mr. Livingston and Mr. Fulton, or at least the latter, would have been ruined. For though Chancellor Livingston's fortune might have been sufficient to encounter such a shock, Mr. Fulton, who had embarked all his means and all his credit in this enterprise, could not have withstood the effects of any continuance of this opposition. The receipts of a steam boat are very great, but the expenses, independent of the interest of the capital, are enormous. And I will venture to say that no steam boat on any part of the waters of this state (unless it be Governor Ogden's or some other ferry boat) has ever given one third of the gross receipts as net profits. The consequence is, that if the receipts be not very large, the boats must be run at a very ruinous loss. It must be recollected, that the whole capital employed in establishing a boat is entirely sunk every five or six years; and as often as that term there must be an advance of from eighty to an hundred thousand dollars for a new boat. The last boat built on the north river, the Chancellor Livingston, cost one

hunderd and twenty thousand dollars. You say, with your wonted candor and accuracy, that the proceeds are immense. Without entering into any calculation on this subject, to shew how prejudiced and erroneous you are, I now offer to sell my whole interest in the north river boats, to any one acceptable to the rest of the company, who will give me my principal with interest from the time I advanced the capital, which is about two years ago. And every proprietor of this city, whom I have had an opportunity of conversing with since I have been here, will gladly part with all his interest on the same terms. Why will you then, sir, for the sake of gratifying your prejudices or your passions, make, upon mere conjecture, a statement as to the value of this property which is so far from being " true in fact."

I rely on the foregoing statement to justify the legislature in passing the law of 1811. I have not attempted and I shall not attempt, to follow you through all your course of argument in relation to these penalties. I am not answering your letter as such : I have not had that design from the beginning. I am only availing myself of the opportunity which you have afforded me, and for which I assure you I am greatly obliged, of bringing into view the merits of the claims under the exclusive grants.

When it was perceived that without a summary remedy the grants to Messrs Fulton and Li-

vingston would not only be unavailing but ruinous to them, was it not just that the state should give such remedy? An enlightened and liberal legislature thought so, and therefore passed the law of 1811, which made the forfeiture effectual as to the object intended.

"But unwearied in your endeavours to excite odium" against the exclusive right, you say that the law of 1811, authorised Mr. Livingston and Mr. Fulton to take possession of a boat running without their licence, "*manu forti*," "without execution, without judgment, without trial, without process, and without any other law than this statute." You are wrong, for the statute gave no such power. It neither gave nor proposed to give any thing but a remedy in law and equity for the recovery of the boat. Now, "I ask you, as a lawyer," is there any remedy in law or equity for recovering property, which enables a person to take possession of a chattel by force, "without execution, without judgment, without trial, without process," from another who had acquired the possession of it, "*tortiously* or *wrongfully*," but not *feloniously*? I do not think you will find mention of such remedy in your Blackstone. But I have not time or inclination to instruct you in the rudiments of your profession.

You insist it would be consistent with the faith of the state, to repeal the forfeiture and other remedies given by the statutes, and in support of

this position, you say it would not be contended in any other case that the legislature could not, without a violation of public faith, alter, modify or take away remedies, whether created by statute or pre-existing by common law, for the maintainance of any right whatever. Again, you are most manifestly wrong. It would be contended *in any case* where the state had made an agreement with individuals, by which private rights were created and vested, and where a consequent benefit was actually given to the state, and where the legislature, with the concurrence of the other contracting parties, had established those remedies in order to secure and protect the rights created and vested by that agreement. You illustrate your ideas by a very learned discussion on the remedy of distress, by the insolvent laws, and a repeal of the laws authorising imprisonment for debt What they have to do with *public faith*, I confess I am at a loss to comprehend. Public faith may well be implicated and pledged to support a specific agreement the state has made, and the terms of a particular bargain or the incidental sanctions of that bargain, which the legislature has advisedly assented and acceded to, at the request of the party with whom it made its stipulations ; but I see no claim upon public faith that can be urged against the modifications of general remedies, founded on no public agreements, enacted only with a view to general policy and expediency, and

in no respect stipulated for or entering into the bargains made between the contracting parties themselves. You qualify your doctrine, however, by adding, provided the parties claiming the right, be left the possession of *adequate means* to defend and enforce the lawful exercise and enjoyment. What are *adequate means*, may depend on circumstances, and may be the subject of difference of opinion between the interested parties. When one has asked for, and the other has expressly consented to and granted, certain means of defending and enforcing the right, I should say the parties had considered and settled between themselves what were the *adequate means;* and that after such settlement, it would not be allowable, or consistent with good faith, for one of the parties (were it even the legislature of a state) against the will of the other, to alter or modify those means, any more than it would be for a tenant who agreed to have a clause of distress inserted in his lease, (where the law would not otherwise have given that remedy) to apply to Chancery for an injunction against distraining his property; because the landlord had *adequate means* of enforcing the payment of his rent by an action of debt or covenant. Nor do I believe such a tenant would obtain the required relief if the clause of distress were contained in a deed, executed after the original instrument, by which the term and some of the conditions of the demise

were altered. He would scarcely be permitted to say that his landlord's rights were fixed by the original lease, and that the distress was only a cumulative remedy. It seems to me, that honor and good faith as well as law, would preclude all discussion of the adequacy of the means, after such an arrangement between the parties themselves: and after, in pursuance of that arrangement, one of the parties had expended (as in the case of the steam boats) immense sums of money on the objects of the agreement.

But even if there were now room for deliberation in the case of the steam boats, I think I have shewn that without the forfeiture, and an effectual mode of enforcing it, the grantees of the state would not possess *adequate means* of defending and maintaining the lawful exercise and enjoyment of their rights. And as to the section directing an injunction to issue, so long as the Chancellor shall consider that, on the ordinary principles of equity, he ought to issue an injunction, that clause is wholly inoperative, and can never have any effect, except the Chancellor, in the exercise of his discretionary authority, should be inclined to refuse one—It therefore can never be brought into activity except when without it there would not be *adequate means* for defending and enforcing the lawful exercise and enjoyment of the right.

But you further object, that "from the second

point decided by the Court of Errors, it follows most conclusively that the cumulative remedies were unnecessary." If so, why are you, and and all those with whom you have made yourself a partizan, so very solicitous for their appeal? Is their being unnecessary a sufficient ground for their being abrogated by one contracting party against the will of the other?

You consider the creation of the forfeiture as at variance with the bill of rights, which declares in the language of *magna charta*, "that every amercement, shall be according to the quantity of the trespass." The bill of rights, you say, "declares in the homely but energetic language of antiquity, that justice shall not be denied or deferred, and that no person shall lose his or her goods and chattles, unless he or she shall be duly brought to answer and be forejudged of the same by due course of law; and if any thing be done contrary to the same, it shall be void in law, and holden for none." Your veneration for that "palladium of civil liberty," is not greater than mine. Let us both endeavor to secure for it the respect of society; and be assured, that nothing is more likely to bring it into contempt and disregard, than the pompous and empty application of it to things with which it has no concern. Look into that statute, and you will find it is meant to be a shield against tyranny and encroachments of the constituted authorities—And that the provisions you

have cited relate to the administration of criminal justice—to the infliction of dicretionary amercements and the arbitrary punishment of offences.

It was after the passage of the law of 1811, and after the decision of the Court of Errors in March, 1812, that Mr. Fulton, oppressed by the expense of the litigations in which his adversaries had involved him, and his losses caused by the Albany boats, found himself under the necessity of selling out a portion of his right, and I and others, relying upon the high authority by which that right had been, as we conceived, established, purchased from him at par. Can it be just then for the legislature now to interpose their authority to take from us that security, and the means of that security given by the contracts of the state. on which we had so much reason confidently to rely for the protection of the property we have acquired, and without which security not one of us, or any other man, would have embarked a dollar.

You say, yes! justice requires that the legislature should again open the door of litigation. That in deference to the merits of the petitioners who had presented claims, "one of them on new and peculiarly formidable grounds"*—out of

* One of these claims which rested on "new and (as to one of them) peculiarly formidable grounds," was that of Mr. Hawkins, whose new and formidable grounds were, that he had contrived a means of propelling a boat by steam to be generated by pouring water on heated iron! This gentleman prevailed on a company in New-York to be of your opinion, that his invention was new and peculiarly formidable.—But they have paid pretty dearly for their credulity. After having ex-

regard to these strangers, who if they have really invented any thing new, have in virtue of their patents a monoply of all the waters of the United States, except as to the very small portions of them which have been granted by some of the states ; you say, that from these considerations, the legislature of this state ought to admit these strangers to intrude upon those who have relied

pended between forty and fifty thousand dollars to build a boat on this "new and peculiarly formidable ground," she now lays a hulk at New-York—having never, I believe, performed but one voyage to Staten-Island. Yet a number of highly respectable characters, who were on board of her at that time, gave certificates which were at least as much in her favor as the certificates obtained by Mr. Fitch as to the performance of his boat. But I have made this note for the purpose of presenting to your notice documents in relation to the other claim, on new and formidable grounds, to which you have referred; that is, the claim founded on the invention of a steam boat capable of towing another boat!! I do not mean to discuss the merits of this *new invention.* There may be a fit time, hereafter, for doing this. I only wish to disclose to you a fact, which I much suspect, the new and peculiarly formidable claimant never disclosed even to his advocates, or I think you would have been more cautious how you put forward his claim with so bold an aspect.

The patentee of the tow-boat, you will recollect, in his petition to the legislature of New-York, represented that the statutes of our state were unconstitutional, and a grievous infringement of his rights as a citizen of the United States. Now, *this very patentee*, at the very time that he was making this representation to our legislature, and complaining of our laws as violating the constitution of the United States, was himself in possession of precisely a similar exclusive right from Massachusetts to navigate the waters of one of the rivers of that state, with his tow-boats—which exclusive grant was made in consequence of a petition from the patentee, in which he urges, with great earnestness, the propriety, necessity, justice and *constitutionality* of such exclusive state grants!! Since the above text was in manuscript, I have obtained copies of the tow-boat patentee's petition to the legislature of Massachusetts, and of the act of that state which was thereupon passed, and which is now in force. They will be found in the appendix.—Read them, "I beseech you." In the life of Fulton, I called Governor Ogden's effort to obtain a repeal in effect, of the exclusive grant of this state, while similar laws were in force in his own state, a "bold attempt." And though you have found great fault with this expression, I think you would agree, that the terms would by no means be sufficiently strong to characterise the proceedings of the tow-boat patentee.

on its authority and good faith, to the certain ruin of the latter, by endless and expensive law suits, and by a suspension in effect of the exclusive right, while the suits are depending. You would oblige our own citizens, who have embarked their property under the sanction of our own laws, and the judgment of our own courts, to give security to the persons that may hereafter volunteer in a contest as to the constitutionality of these statutes. And if it were possible you could be right—if the laws should be determined to be unconstitutional—our own citizens would be the victims of their reliance on the acts of our own legislature.

Why should there be all this tenderness for strangers, voluntering a controversy, in preference to those among ourselves who have only acted on the faith of our own laws and judicial decisions? —Why should not the legislature say we have thought, and our judges have thought, the encouragements we have given, constitutional—If you consider them otherwise, pursue your remedy, but you shall have no assistance from us to induce you to violate laws which have invited our grantees to place so much of their fortunes on the security we proffered.

I have asserted in the life of Fulton, "that the law passed by the committee was, in effect, an entire repeal of the exclusive grants of Messrs. Livingston and Fulton." You deny that it was so. It will require but a very few words to convince

any "undeluded, candid and impartial man," that my assertion was correct.

The first, and only section of that act which has relation to this question is as follows:

"Be it enacted by the people of the state of New-York, represented in Senate and Assembly, That nothing contained in any of the said acts, shall be so construed as to affect the right which any person or persons may have to use the invention of the steam boat. or any improvement thereon, which have been or hereafter may be patented under the constitution and laws of the United States: Provided always, that in such use they do not interfere with any invention or improvement lawfully secured by the acts above mentioned, or by any of them."

The first clause of the section gives a right to use on the waters of this state, notwithstanding the laws passed in favor of Livingston and Fulton, the invention of the steam boat, or any improvement thereon which were then, or might be thereafter patented. Since the establishment of Fulton's first boat there have been more than forty-seven patents taken out for alleged improvements on steam boats or on boilers, or some part of their machinery, or rather there were this number some year or two ago. How many there may now be I do not know; probably not short of a hundred: among these is Mr. Dod's patent for parallel links and cranks, Mr. Curtis's rotatory motion, and Mr.

Hawkins, for creating steam by pouring water on hot iron ! ! Now, all these patentees, it will be admitted, might, if the law stood without the proviso, run a boat, having any part of the machinery patented (if it were only a parallel patented link) on the waters of this state notwithstanding the exclusive grants to Livingston and Fulton. It will be admitted, I presume, if there were no further provision in the law you reported, that it " would have been, in effect, an entire repeal of the exclusive grants to Livingston and Fulton."

Let us see then what operation the proviso " that in such use they do not interfere with any invention or improvement lawfully secured by the acts above mentioned. or any of them," can have. How could this proviso operate to reserve any thing to Messrs. Livingston and Fulton ? Although the act of 1798 in its recital mentions Mr. Livingston being the possessor of a mode of propelling a boat by steam, on new and advantageous principles, yet none of the acts passed in their favor do even pretend to secure any invention or improvement. There is not the least reference to invention or improvement in them. Mr. Fulton, it is true, claimed to have made inventions and improvements in steam navigation, but the acts passed in his and Chancellor Livingston's favor, do not recognise him as an inventor or improver. They give the exclusive grant merely on the ground of his having undertaken to establish steam boats that

would go at a certain velocity, without considering whether the effect was to be produced by his own invention or improvement or that of any other person. What effect then could the proviso have had to give Messrs. Livingston and Fulton any protection whatever. Examine again the laws, and you will find that my representation is not "founded in a perversion of their language." Condescend now to read the passage you have quoted from the life of Fulton, with "candor and justice," and you will perceive that the omission of the word 'improvement' after the word inventions, was casual; and that the argument by which I prove that the bill reported by the committee was in effect a repeal of his exclusive grant, rests in no respect on the suppression of this unimportant word. If you had given to the matter of your accusation, as much attention as to its style, "you might have spared your own feelings of propriety the violence which they must necessarily have suffered, when you thought it incumbent on you to assert" positions so unfounded in language so unseemly. But to return.

Let us suppose that your act had become a law, that Governor Ogden immediately thereafter, had put a boat, with Dod's patented cranks and links, in operation on the Hudson, and that you had been applied to as a lawyer to vindicate the exclusive right of Livingston and Fulton.--- What process would you have advised, or what suit

would you have instituted ? How would you have framed your declaration? or when you were called upon to shew what invention or improvement the laws passed in favor of Livingston and Fulton secured, or even purported to secure, what would you have said ?

These are questions to which I know it is impossible for you to give any satisfactory answer--- And if you cannot, you must acknowledge that the law you recommended to the legislature, " would have been, in effect, an entire repeal of the exclusive grants to Livingston and Fulton." What ever you may have thought, I know Governor Ogden considered that such would have been its operation----But at any rate, were you so entirely ignorant as not to perceive, that you were laying the grounds of a litigation that must inevitably have been ruinous to Messrs. Livingston and Fulton. That you were inviting every miserable pretender to come in and contest their right with them : That if they could have subdued one they would only have the same grounds to go over again with another. And that they must have been borne down with the multitude of projectors who would haveadvanced their pretensions on grounds not " more relative" than Daniel Dod's or Hawkins's.

Was this a law which it was consistent with the faith, honor and justice of the state to pass ? After Messrs. Livingston and Fulton had

so frequently had the encouragement of the state to expend their money in making and improving their establishment on the Hudson : when Mr. Fulton had devoted his whole means on the faith of this encouragement : when many, relying on the security that the state had held out by repeated acts, and after a solemn decision of the highest tribunal in support of these acts, had invested their funds in the property which they had reason to think was thus protected, would it have been consistent with faith, honor and justice, to pass a law which would have been as destructive of the property to which it related as if it had been an act of confiscation ? If you continue to think such a law would have been consistent with faith, honor and justice, I am convinced that there is not an "undeluded, candid and impartial man," who will think with you.

It was my intention to notice some passages in your book, which have not immediately fallen within the range of the course I have pursued ; but on reflection, I do not think it worth my while. They were only such as tended to shew that you had not always preserved your "unruffled spirit ;" and to expose, as I think I could do, the miserable logic you have frequently attempted.

This performance, however, has swelled in my hands to a bulk so infinitely beyond what I contemplated, that I must bring it to a close. But before I conclude, let me acknowledge an error

under which I labored till lately. When I formerly spoke and wrote of the report, I privately believed from a view of its contents, that it had proceeded from the pen of the petitioner himself; and perhaps was somewhat influenced by that opinion, in my manner of treating it. A careful perusal of your last pamphlet has, however, undeceived me; and I am now convinced, the report and the reported bill were entirely your own.

Your obedient servant,

CADWALLADER D. COLDEN.

Albany, 10th Feb. 1818.

APPENDIX.

From the New-York Evening Post of October 21.

New-Orleans Legislature—I never felt more gratification in acknowledging an inadvertent error, than I now do that into which I was on Saturday evening led by the imperfect statement which I copied from a New-Orleans paper, of the proceedings of the legislature of that state in relation to the grant to Fulton and Livingston—The following history of the whole proceedings, from the Orleans Gazette, will present a view of the whole ground and gratify many of our readers.

From a New-Orleans paper.

STEAM-BOATS.

We understand that in addition to the following legislative interpretation of the existing laws on this subject, another has been passed for the further encouragement of the same system, incorporating a company, called the "The Atlantic Steam Coasting Company," with the exclusive privilege of entering the waters of this state from sea with vessels impelled by the force of fire or steam, for the space of twenty years, with the licence of the proprietors of the present grant—The object of the company, we believe, is to establish a steam ship between New-Orleans and New-York. It was by the same legislative munificence that we now enjoy the invaluable benefit of steam navigation on the Missisippi, and we hope that in a few years we shall be approximated within ten or twelve days passage of our eastern brethren. We hope in a few days to be enabled to procure a copy of the law upon this subject, when we will present it to our readers.

The following letter from Gov. Claiborne, explanatory of the circumstances which led to the en-

actment of the original law on this subject, has been handed us for publication.

New-Orleans, Jan. 25, 1817.

SIR.—In reply to your letter of the 22d inst. I can only give you the following statement—

In the summer of 1810, being in the city of Washington, I became acquainted with the late Mr. Joel Barlow, and had frequent conversations with that distinguished man on subjects of national interest. Mr. Barlow was a great admirer of the talents of the late Mr. Robert Fulton, and believed that the steam navigation so much improved by Mr. F. could be brought to still greater perfection, and that the day was not distant, when vessels propelled by steam would be employed, not only on all the bays and rivers of the United States, but also in the coasting trade. He made enquiries of me as to the difficulties of ascending the Missisippi, and particularly as to the strength of the current in high water. These being answered, as far as my personal knowledge allowed me, Mr. Barlow seemed to think that steam boats might be introduced on the Missisippi with a certainty of success. On this point I expressed some doubts, but accompanied them with a wish to see the experiment made. Mr. Barlow subsequently opened a correspondence with Mr. Fulton on the subject, and it resulted in an invitation from Mr. F. to me, that on a tour which I contemplated making through the northern states, I would take Albany in my way, and ascend the north river in one of the steam boats. In the fall of 1810, I went on to New-York, and the morning after reaching that city, finding a boat proceeding to Albany, I took my passage in her. The captain having readily satisfied my inquiries as to the machinery, the force of the steam, and the speed of the boat thro' still water, my doubts as to the practicability of stemming the cur-

rent of the Missisippi were wholly removed. Returning from the northward, I passed several days in New-York, and was much gratified with several interviews which I had with Mr. Fulton and his associate, the late venerable Chancellor Livingston.—Those gentlemen were strongly urged by me, to introduce the steam navigation on the Missisippi, with assurances of my entire conviction of its success, and the most liberal encouragement. They entertained no doubt as to the ultimate success of the experiment; but spoke of the great expenditure and heavy advances with which it would be attended. These they were unwilling to encounter, unless previously assured of the protection of the legislature of the territory of Orleans. I enquired as to the nature of the protection desired, and was informed—"An exclusive privilege to navigate the waters of the Missisippi, passing through the territory of Orleans, with boats propelled by steam, was the only condition on which they would embark in this enterprise." Much conversation ensued on the same subject, and it resulted in a promise on my part to lay before the territorial legislature a petition from Messrs. Livingston and Fulton, requesting the exclusive privilege, and a promise on their part, that if it were granted them by an act of the legislature, one or more steam boats should be sent to New-Orleans, as speedily as they could be built.

In January, 1811, I had the petition before the territorial legislature, and recommended it to their early and respectful consideration. The act entitled "an act granting to Robert R. Livingston and Robert Fulton, this sole privilege of using steam boats for a limited time in the territory," was passed on the 19th day of April, 1811. An attested copy of this act I immediately transmitted to Messrs. Fulton and Livingston, who, in fulfilment of their promise, did, in the winter of 1812, send to New-Orleans the

steam boat "New-Orleans," and subsequently three others. Shortly after the arrival of the first boat, a committee of five respectable merchants in the city of New-Orleans was assembled by me for the purpose of ascertaining whether the requisites of the law had been complied with, and further, to fix the rate of freight which under a particular provision of the law, the boats might exact.

The committee reported favourably, and settled a standard of freight, which I handed to the agent of the boat for his government.

Such are the facts, as far as related to my agency, and you are at liberty to use them as you shall think proper.

I am, sir, very respectfully,
Your humble serv't.
W. C. C. CLAIBORNE.

J. Lynch, Esq. N. Orleans.

Extract from the Report of the House of Representatives of the sitting of Saturday, January 18, 1817.

Mr. Jones introduced the following resolution, to wit: "Resolved, that the committee of commerce and manufactures be instructed to enquire into the expediency of repealing an act of the legislature of the territory of Orleans, granting to Robert R. Livingston and Robert Fulton the sole privilege of using steam boats for a limited time."

On motion, ordered that the above resolution be adopted.

The report of the committee of commerce and manufactures which had been ordered to lie on the table on Tuesday last, was then read, as follows:

Your committee of commerce and manufactures to whom had been referred the resolution for the purpose of enquiring whether it would not be proper to repeal the charter granted by the legislature of this state in the year 1811 to Robert R. Livingston and

Robert Fulton, have examined the subject with due attention, and beg leave to make the following report: Messrs. Livingston and Fulton, after having, in the year 1811, obtained the charter which grants to them the exclusive privilege of navigating the Mississippi with vessels propelled by steam, have used the utmost activity and exertions in order to put it into execution. In the year 1812, the citizens of this state witnessed, for the first time, the magnificent spectacle exhibited by the steam boat NEW-ORLEANS, navigating the waters of the Missisippi. They soon were enabled to appreciate the manifold advantages which result from that sublime invention, so happily protected by the legislature of this state. The first of those advantages and the one which was most lively, was the facility and promptness of the intercourse between the most distant part of the state which that new means of conveyance affords, and next, the reduction which took place in the price of freight. Your committee owe it to justice and truth to say, that the privileged owners immediately complied with that part of the charter which made it their duty to shew whether the steam boat New-Orleans possessed all the necessary qualifications in order to enable them to make use of their privilege, and to establish a rate of freight, by one fourth less considerable than that which was customary between Natchez and New-Orleans. The annexed certificate signed by Messrs. Thos. Urquhart, William Donaldson, Jacob Trimble, B. Chew, and L. P. Seguin, proves that those formalities were complied with on the 19th of January, 1812. Encouraged by this success, the owners soon gave us another steam boat, and in 1813 the VESUVIUS appeared at New-Orleans.—She was followed in 1814 by the ÆTNA. However, the company experienced very severe losses. Every one knows the New-Orleans was wrecked in 1814, and that the Vesuvius was in 1816 consumed

by fire in the port of this city. These losses were soon repaired. A new boat bearing the same name was built in this port in 1816 in the place of the one wrecked; and we have all witnessed the Vesuvius springing up again from her ashes in a space of two or three months, much to the credit of the skill of our ship builders and of the zeal of the company—that fine boat, although she was launched but a few weeks ago, is now nearly ready to get into operation. The committee, whom their enquiries have enabled to ascertain the truth of the facts just stated, far from thinking it useful or necessary to repeal the charter of the company, do on the contrary think that they ought to be encouraged by all possible means. Four years have hardly elapsed since the privilege was granted, and we have already seen in this state five steam boats, which contribute to give life and prosperity to commerce. Have we not every reason to hope, that in a few years hence, we shall have a sufficient number of them to allow us to carry on with the western states a trade which cannot fail to be extremely advantageous to this? Hitherto states that come and bring the fruits of their soil and industry here, used to draw the manufactured goods and colonial produce necessary for their use from the Atlantic ports. But the expenses of transportation are so considerable, that during the late war a great number of barges were employed at a very high rate, to sail up the river to carry to those states the produce of Louisiana and the goods from foreign importation. Nobody can entertain a doubt that if the numbers of steam boats were sufficient to enable us to supply regularly the countries situate on the western streams, those countries would soon abandon their connexions with the Atlantic states and draw all their wants exclusively from New-Orleans. Such an outlet for the commerce of Louisiana is very desirable, and no doubt but the surest and most efficacious

means to attain that end, is to encourage the company which may best secure its success.—The specie which the people of the western country carry home and send afterwards to the northward, will all remain here, and we shall soon reach that degree of prosperity which we can only expect from an extensive commerce with the interior of the country.

Well convinced of the truth of the above statement, your committee could not avoid reflecting upon the motives which had induced this honourable house to pass the resolution offered to them. No doubt the member who introduced that resolution, must have thought that the company had forfeited their privilege by violating some of the provisions of their charter. It therefore became the duty of your committee to enquire on that subject. The result of their enquiries has been most favourable to the company. They faithfully abided by the tariff of freight established by the commissioners, whose names appear at the foot of the annexed certificate, and your committee do not learn that that tariff ever was departed from in any circumstance. That company have scrupulously executed all their obligations. Why should their charter be repealed? Would it not be committing a most flagrant injustice? Would it not be violating the faith of the state upon which that company must have relied when they entered into a speculation which has until now occasioned to them nothing but enormous losses? Would the legislature choose to operate their ruin at the time when they have been obliged to lay out considerable funds for the re-building of the boat destroyed by fire? Such an act on the part of a private individual would justly be reprobated by the laws; and not a legislature could be found in any of the United States, so little acquainted with their duties as to consecrate it by a statute.

Your committee are therefore of opinion, that

there is no motive for repealing the law which grants to that company the exclusive privilege of navigating with steam boats for a limited time.

(Signed) P. L. MOREL, Chairman.

On motion, resolved, that the above report be adopted.

To the honorable the Senate and House of Representatives of the Commonwealth of Massachusetts, in General Court assembled.

The petition of John L. Sullivan, humbly sheweth.

That after many experiments and much expense, your petitioner succeeded in adapting steam engines of a particular construction, to boats of the small burden used on our canals and rivers, so as to enable a steam boat of this size to contain a power of twenty or thirty horses, and to tow a number of luggage boats, and to overcome rapids by the same power applied to a windlass connected with the engine.

Your petitioner now owns such a boat, and put the same in operation on Merrimack river the last year.

That this new and useful application of steam engine power, being of the nature of those inventions or discoveries which the patent laws of the United States are intended to encourage and protect, your petitioner has obtained a patent for his steam towboat, and is desirous of putting it in operation on Connecticut river, by which the western parts of this commonwealth may enjoy the advantages of greater facility in transporting the produce of the country to market in less time, and therefore at less expense; and especially in the saving that may be made in bringing up that river the various commodities that commerce furnishes to the agriculturalist, the manufacturer and all classes of men.

Your petitioner therefore begs leave to ask the attention of the legislature to the principal obstacle to this useful design, and to the difference between his patent and those of a more common kind, the latter, usually granted for some mechanical purpose, are within reach of individuals, and require no very great expense or capital; and by being soon spread through the community, remunerate the inventor within the patent term of fourteen years: While, on the contrary, a patent competent to embrace business of the magnitude contemplated under that of your petitioner, demands a great capital which cannot be commanded for a purpose that may not be carried into complete effect before the term will expire. No prudent man will therefore engage in it, because the first expense may not so soon be remunerated. The public is therefore deprived of its advantages, and will be so for ever, without similar encouragement to that now prayed for.

Your petitioner, therefore, with a view to the formation of a company with an ample capital, and sufficiently numerous; comprehending people living near the river, as well as in other parts of the state, who may be disposed to promote improvements of this kind in the country, prays that the exclusive use of Connecticut river for steam tow-boats, so far as the same passes through this commonwealth, may be granted to him and his associates, and their successors and assigns, for the term of fifty years; provided, that within five years from the passing of the bill, at least one steam tow-boat shall have been put in operation thereon.

Your petitioner begs leave to observe, that the allowance of five years is prayed for, because considerable time will be required to prepare the machinery, boats, and store houses, and to form the boating company; and more especially, because there are falls in the river a few miles above Hartford, which

your petitioner has applied to the legislature of Connecticut for leave to lock, and which it may require two or three seasons to effect.

To obviate every objection that your petitioner can conceive it possible to raise, he begs leave to state, that he does not propose to the legislature to stop any channel of business or industry now open and in use; but proposes to leave the river free as nature and art have made it, to all who do or may hereafter ply upon it in the common way. On the contrary he asks only the necessary protection for those who may join him in establishing steam towboats to aid the business of that section of the country, and give even to those who navigate in the old way the advantage of the improvements on the river, that may be found necessary—so that the number of men employed will increase, and the great river, in effect, will be converted into a canal, and the navigation thereon attain that regularity and despatch necessary to gain the confidence of the trader and the farmer, and by the greater facility of transportation augment the profits on the produce of the country.

Nor is this undertaking uninteresting to the metropolis of the state; for your petitioner looks forward with confidence to the formation of a canal, some time ago projected between Weymouth and Taunton. By that route and Connecticut river, merchandize will be carried to and from the western parts of this commonwealth; and though circuitous it will be less expensive than land carriage, and open a new market for the bulky produce of those counties: while at the same time the very probable connexion of Merrimack river with Connecticut river, across the country between Concord in New-Hampshire and Windsor in Vermont, by means of Sunapee lake, on the highest of the intermediate lands forming the source of Sugar river, running to the west, and the Contoocook running to the east, will lead the

trade of Vermont to this commonwealth, and in time of war afford a secure communication from Boston to Connecticut, by water. Compared with some works of this kind in Europe, however extensive this plan may seem to be, it will appear on examination, limited and practicable; especially when it is recollected, that in England alone, the extent of their canals exceeds three thousand miles: and it is well known that they have proved one of the principal sources of the prosperity of the United Kingdom.

The practice of other states in giving exclusive rights on rivers for a limited time, to encourage useful enterprize and improvements, and that of our own state in numerous grants of bridges and canals, would shew, if any doubt of it could exist, the constitutionality of this kind of appropriation of the waters of the commonwealth.

Your petitioner, therefore, prays that the encouragement and protection above mentioned, necessary to carry his improvements in inland navigation into extensive operation and usefulness, may be granted.

And your petitioner, as in duty bound, will ever pray.

JOHN L. SULLIVAN.

Boston, May 30, 1814.

A true copy, attest,

A. BRADFORD, *Secretary of Commonwealth.*

A. D. Clark. Esq.—
3/30/08.

Commonwealth of Massachusetts.

In the year of our Lord one thousand eight hundred and fifteen.

An Act granting to John L. Sullivan a term of time for the use of his patent Steam Tow-Boats, on Connecticut River, within this Commonwealth.

Be it enacted by the senate and house of representatives, in general court assembled, and by the authority of the same, That there be and hereby is granted to John L. Sullivan, his heirs, executors, administrators and assigns, on the conditions herein contained, the exclusive right to Connecticut river, within this commonwealth, for the use of his patent steam tow-boats, and the improvements he may make thereon, for the space of twenty-eight years; being double the time allowed by the patent laws of the United States, from and after the expiration of his said patent, bearing date the 2d day of April, in the year 1814: Provided however, that the said Sullivan, or his heirs, associates or assigns, shall build, and put in operation on the said river, at least one steam boat within five years from the date of this act.

In the house of representatives, Feb. 3d, 1815—This bill, having three several readings, passed to be enacted.

TIMOTHY BIGELOW, *Speaker.*

This bill, having had two several readings in senate, Feb. 3, 1815, passed to be enacted.

JOHN PHILLIPS, *President.*

Feb. 7, 1815—Approved,

CALEB STRONG.

Copy examined, by

A. BRADFORD, *Secretary of Commonwealth.*